DOCUMENT RESUME

ED 175 573 PS 010 871

TITLE	The Interstate Placement of Children: A Preliminary Report.
INSTITUTION	Council of State Governments, Lexington, Ky.
SPONS AGENCY	Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice), Washington, D.C.
PUB DATE	Aug 78
GRANT	OJJDP-77JN-99-0021
NOTE	54p.; Appendixes in this document have been omitted due to small print size
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Case Studies; Certification; Child Abuse; *Children; Data Collection; Delinquency; Dependents; Emotionally Disturbed Children; *Interstate Programs; Literature Reviews; Mental Illness; Neglected Children; *Placement; Research Methodology; *Residential Care; *Residential Programs; *State Legislation
IDENTIFIERS	Illinois; *Interstate Compacts; North Carolina; Texas

ABSTRACT

Through this report, the Council of State Governments, in conjunction with the Academy for Contemporary Problems, attempts to shed new light on the problem of the placement of children in out-of-state residential care. The report describes the results of a pilot feasibility study conducted in Illinois, North Carolina, and Texas to determine the accessibility, retrievability, and reliability of certain types of data related to issues associated with the interstate placement of children. A number of different questions were discussed in the process of the study: the number and types of children involved; the circumstances under which they are placed; the total cost of placements; the legality of the practice; and the effectiveness of interstate compacts, licensing laws, and other statutes intended to safeguard the rights and well-being of children. The report includes sections on the following: a review of methodological issues associated with the study; a review of relevant research literature; a description of the law surrounding interstate placements; a description of the nature of interstate compacts; a digest of the case studies of Illinois, North Carolina, and Texas; a discussion of issues concerning data collection problems; and recommendations for a national study. This study documents what records are likely to exist, what information is not retrievable, and what the best sources are for each data element needed for successfully conducting a national study of interstate transfers. Suggestions are offered which could improve practices and policies affecting interstate placement. (Author/SS)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED175573

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

The Interstate Placement of Children: A Preliminary Report

Project Staff

The Academy for Contemporary Problems

Sandra Clapsaddle
Administrative Assistant

Sherry Flannery
Secretary

Elizabeth Gray
Word Processing Coordinator

John Hall
Research Associate

Barbara Sullivan
Research Associate

Kurt Weiland
Research Associate

Joseph L. White
Project Director

The Council of State Governments

Dr. Jack D. Foster
Director of Research

Peggy Foster
Secretary

Michael Kannensohn
Research Associate

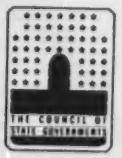
Ralph J. Marcelli
Editor

Donald Setterbo
Research Associate

J. Robert Weber
Coordinator, Crime and Delinquency Section

This report was supported by grant number 77JN-99-0021 from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. The contents of this publication are the results of the project staff and do not necessarily reflect the views of the Office of Juvenile Justice and Delinquency Prevention or the Council of State Governments.

PS 010871



THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

Published August 1978 by
The Council of State Governments
Iron Works Pike, Lexington, Kentucky 40578

Printed in the United States of America

RM—647
Price: $6.00

Contents

Foreword v

Acknowledgments vii

Introduction ix

1. Methodology Review 1
   - Literature Search 1
   - Selection of States 1
   - Determination of Interviewees 1
   - Identification of Relevant Data Elements 2
   - Development of Survey Instruments 3

2. A Review of the Literature 4
   - Professional Journals and Treatises 4
   - Other Literature and Media Reports 4

3. The Law of Interstate Placements 8
   - The Constitutional Setting 8
   - Statutory Authority for Court-Ordered Out-of-State Placements 10
   - Executive Agency Authority for Out-of-State Placements 11
   - Recognition of Court Dispositional Orders in Other States 12
   - Administrative Regulation of Interstate Placements 16
   - Conclusions 18

4. Interstate Compacts 22
   - Compacts, Agreements, and Uniform Laws 22
   - Compact Construction 23
   - Constitutional Basis for Compacts 23
   - Interstate Compact on Juveniles 24
   - Interstate Compact on the Placement of Children 26
   - Interstate Compact on Mental Health 27
   - Compact Procedures for Interstate Placements 28

5. Case Study Digest 31
   - Illinois Case Study Digest 31
   - North Carolina Case Study Digest 33
   - Texas Case Study Digest 34
   - Federal Agencies Involved in Sending Juveniles 36

6. Data Collection Issues 38
   - Sending State Data Problems 38
   - Receiving State Data Problems 41
   - Receiving Facility Data Problems 41
   - Conclusion 42

7. Recommendations for a National Study 44
   - Categories of Children 44
   - Types of Facilities 44
   - Units of Organization 45
   - Conclusion 47

Foreword

Issues surrounding the interstate placement of children have arisen within many contexts during this country's history, from the opening of our western frontiers to the absorption of European immigrants into our Atlantic seaboard cities. In a very real sense, the question never changes: How can we do what is best for our children in such a way as to promote the perpetuation of our way of life?

Through this report, the Council of State Governments, in conjunction with the Academy for Contemporary Problems, attempts to shed new light on this problem. We hope this report contributes to the most current dialogue.

Herbert L. Wiltsee
Executive Director
The Council of State Governments

Lexington, Kentucky
August 1978

Acknowledgments

The Council of State Governments takes this opportunity to thank the people who contributed to this report. In Illinois, North Carolina, and Texas, many state officials, local officials, and facilities operators gave hours of their time for interviews and in preparing special statistical reports. Since so many assisted in the project, it is virtually impossible to thank them all. However, those with whom the Council had the most contact are enumerated in the introductory section to each of the case studies in Appendix C. Their contributions, as demonstrated by this publication, will have a positive impact on childrens' services in America.

The Council would also like to express its appreciation to Dr. James Howell, Director, National Institute for Juvenile Justice and Delinquency Prevention, for his recognition of the timeliness of this research and his encouragement of our request for funds to conduct the study. It has also been our pleasure to work with Ms. Pamela Swain, the project monitor. Always available and responsive, Ms. Swain helped enormously in expediting our requests which became necessary from time to time.

The Council owes a special thanks to the Academy for Contemporary Problems for directing the research and preparing the report in conjunction with Council staff. We would like to thank Mr. Joseph White, the Academy's Senior Fellow in Social Policy, for directing the project and preparing the report. Cooperation between the two organizations enabled everyone involved to act as a single research team. Mrs. Sandra Clapsaddle and Mr. John Hall, both of the Academy staff, also deserve commendation for their dedicated efforts, which frequently extended into weekends and holidays.

To everyone who assisted and who may have not been named, our sincere thanks.

Dr. Jack Foster
Director of Research
The Council of State Governments

Introduction

The placement of children in out-of-state residential care has recently received special attention. However, not much is known about this practice. The issue has been largely ignored in professional journals, despite a widespread and intensive examination by the news media over the last five years. Several studies by state agencies, legislative staff, and advocacy groups focusing on the question have not only raised public concerns about how children have been treated when sent to facilities in other states but, at the same time, have documented how difficult it is to gather data on either a statewide or national scale. Most of these reports reflect a combination of the presentation of whatever evidence was collectible, held together with anecdotes which were supposed to prove the point. Comprehensive, in-depth research simply has not occurred.

States' concerns over the placement of children can be traced back to the early years of this nation. It is clearly evidenced in child placement legislation in this century, which has attempted to regulate such transfers, and in licensing provisions to regulate the receivers. Current interest in the interstate placement of children in residential facilities has been generated by two factors: the possibility that such children are subjected to abuses because their placements may be in substandard facilities, and the due process and equal protection issues raised by sending children outside the jurisdiction of the placing court or public agency.

Numerous companion issues might be raised, as confirmed by this study. For example: some states placed hundreds of children out of state while other states seldom resorted to this practice; some of the reports cited instances where children were placed and apparently forgotten for several years; on-site monitoring and evaluation of out-of-state facilities' services were reported to be nonexistent.

Three interstate compacts have been developed to facilitate the interstate placement of children, each applying to different circumstances. Although most states are members of all three compacts, it is generally acknowledged that a sizable but unknown number of interstate placements are effected without the benefits or protections afforded by the compacts. The reasons for such avoidance might be attributable to intentional violative behavior, ignorance of the law, or the fact that certain placements do not come under the purview of any of the compacts. Since the frequency and circumstances of noncompact placements have never been nationally documented, the reasons are hard to pinpoint.

Accordingly, the Council of State Governments, in conjunction with the Academy for Contemporary Problems, undertook a pilot feasibility study in three states to determine the accessibility, retrievability, and reliability of certain types of data related to issues associated with the interstate placement of children. The unknown availability of statistics about such placements suggested that a national research effort might either be premature or nonproductive.

A number of different questions were discussed in the process of this study: the numbers and types of children involved; the circumstances under which they were placed; the total cost of placements; the legality of the practice; and the effectiveness of interstate compacts, licensing laws, and other statutes intended to safeguard the rights and well-being of children. For those concerned with the legal issues, Chapters 3 and 4 should prove useful.

The case studies of Illinois, North Carolina, and Texas help to gain a better appreciation of the real magnitude of the problem as well as the frustrations connected with the collection of data. For successfully conducting a national study of interstate transfers, the study documents what records are likely to exist, what information is not retrievable, and what the best sources are for each data element. Further, suggestions are offered which could improve practices and policies affecting children who are placed outside their states of residence.

Should a national study be commissioned, important ramifications for current practices would not be difficult to imagine. At the very least, many questions regarding the frequency and legality of interstate placements could be laid to rest. In any event, this feasibility study can stand on its own as an authoritative legal reference and a study of three states' practices.

Joseph L. White
Project Director

1. Methodology Review

The research design called for a preliminary study in three states in order to determine the feasibility of a national survey of children placed in out-of-state facilities. A number of major tasks were immediately identified: (1) a literature search; (2) the selection of states; (3) the determination of the most appropriate interviewees, and procedures for identifying them and obtaining their cooperation; (4) the identification of data elements that were relevant to the research; and (5) the creation of survey instruments.

Throughout the project, a critical point was the peculiar nature of feasibility studies. The objectives were to learn as much as possible about the practices relating to children who are sent out of the test states or received by them and, at the same time, what techniques would be practicable and what data would be predictably accessible if the study were replicated nationwide.

LITERATURE SEARCH

The literature search was divided into three segments:

1. A review of constitutional provisions, legislative acts (excluding interstate compacts), and judicial decisions relating to the interstate placement of juveniles.

2. A review of the three most critical interstate compacts that affect children, including the historical evolution of compacts as a mechanism for interstate cooperation.

3. A review of popular literature, professional books and journals, mass media publications, and research by advocacy organizations. Of particular note are the following two tasks connected with this portion of the research.

Searches of automated literature indices were made of Project SHARE; the National Criminal Justice Reference Service (NCJRS); and the Mechanized Information Center at the Ohio State University Library. The Council of State Governments' library of publications was also searched for applicable articles, monographs, journals, and texts.

In addition, personal letters were sent to executives of 16 organizations, enlisting their help in locating research documents, unpublished reports, and other information relating to interstate placement.[1]

In particular, the National Council of Juvenile and Family Court Judges, the Children's Defense Fund, the Child Welfare League of America, and the New York Civil Liberties Union were especially helpful in providing information.

The results of these inquiries constitute Chapters 2, 3, and 4. When taken together, the three chapters should provide the reader with a fairly complete understanding of what is presently known about the interstate placement of juveniles in America.

SELECTION OF STATES

In order to select the test states, several criteria were established which were designed to assure that as much useful data as possible could be collected in such a small sampling of states. States were judged according to their reputations for sending or receiving children, the extent to which children's services were the responsibility of state rather than local government, their respective responsibilities for licensing and monitoring private juvenile facilities in their states, the likelihood that relevant data would be available, and our assessment of the willingness of state agencies to cooperate. The states selected were Illinois, North Carolina, and Texas.

DETERMINATION OF INTERVIEWEES

Four different approaches were used to obtain the information for this report: (1) telephone surveys, (2) personal visits, (3) mailed surveys to receiving facilities, and (4) postcard surveys to foster parents.

The sending and receiving state data were to be acquired from five service delivery systems in which all state and local governments are involved: (1) juvenile justice, (2) child welfare, (3) education, (4) mental health, and (5) health.

State agencies were identified in each of the five service delivery areas through the use of specially designed questionnaires for telephone surveys. Individuals were identified who were responsible for administering interstate compacts, licensing, accrediting or monitoring facilities, placing or facilitating the placement of children into facilities

located in other states, paying for placements in other states, supervising the placement of children in other states, and overseeing the treatment received by children sent to their states from other jurisdictions. A limited number of local agencies, such as juvenile courts and mental health centers, were also visited, primarily as a control for assessing the reliability of state agency data.

During the course of preliminarily testing questionnaire forms in Texas, it became clear that three federal agencies were involved in the practice of interstate placement of juveniles. All three agencies were visited and information was obtained from them. These agencies were: CHAMPUS, Department of Defense; Bureau of Indian Affairs, Department of the Interior; and Bureau of Prisons, Department of Justice.

Ten different types of juvenile facilities were identified. For purposes of convenience, the data received from these various facilities were classified into five categories:

(1) *Boarding schools*, consisting of boarding schools and military schools.

(2) *Child-care facilities*, consisting of children's homes, orphanages, and shelter facilities.

(3) *Psychiatric hospitals*, consisting of hospitals which either are completely devoted to mentally ill juveniles or which have juvenile psychiatric units.

(4) *Residential treatment centers*, consisting of facilities that offer training and counseling as their primary services.

(5) *Other*, consisting of such facilities as maternity homes, seminaries, and other places that would be difficult to combine with those in the previous categories.

The mail and postcard surveys presented many problems. In one state, a decision was made to vary research procedures from the other states by mailing the surveys to eight facilities that had indicated they had admitted six or more out-of-state children during 1977 and indicated they would cooperate. In this way, the practicality of a mail survey to such institutions could be tested. Only one survey was completed and returned. Out of the 67 facilities visited in the three states, two psychiatric hospitals and two residential treatment centers refused to share their records.

In Illinois, a mailing could not be made to foster parents because staff did not have access to the directory of foster parents. In North Carolina, the mailing took place in two steps. The state Department of Human Resources distributed the mailings to county social services agencies, which addressed and mailed them to foster parents. In Texas, the mailing went to approximately 10 percent of all foster parents in the state. This represented the entire roster of foster parents living in about one half of the counties served directly by the state Department of Human Resources. The other one half, containing about 95 percent of the state's population, provide welfare and other social services through county offices and maintain their own foster parent rosters.

IDENTIFICATION OF RELEVANT DATA ELEMENTS

In determining the feasibility of a national study of the interstate placement of juveniles, certain types or clusters of information were considered to be important. The retrievability of the following data, therefore, became the basis for all of the work which followed:

(1) The types of agencies and persons engaged in the process of sending children to other states for residential care.

(2) The numbers and types of children placed in out-of-state facilities, except for placements not germane to the study.

(3) The reasons for out-of-state placements.

(4) The types of facilities receiving such children and their locations, personnel, degree of security, programs, and policies.

(5) The interstate compacts used for interstate placements, the extent of use and circumvention, and the reasons therefore.

(6) The differences in processing or treatment between in-state and out-of-state placements.

(7) The costs of such placements and the sources of funds.

(8) The types of data regularly collected by state agencies which bear upon the interstate placement of children.

In structuring a comparable manner in which data would be sought, classified, and analyzed, two policies were adopted. The first decision related to dividing the information sources based upon practices or activities; the second related to seeking data from specific public service delivery systems. As the practice of interstate placements was conceptualized, three distinct types of information appeared to be relevant:

(1) Practices of agencies in sending states. For purposes of convenience, the term "sending state" is used to

designate the child's state of residence. The actual senders might be parents, social agencies, or religious organizations, not just agencies of state government.

(2) Practices of state agencies in receiving states. Similarly, the term "receiving state" is used to designate the state in which the child is placed and is not intended to suggest that agencies of state government have assumed custody.

(3) Practices of public and private facilities that receive children from out of state.

It became readily apparent that many children might be placed in out-of-state facilities for reasons or through channels that had nothing to do with the juvenile justice system. In some cases, the apparent lack of connection might be misleading, as in the case of a delinquent child who might need residential mental health services. As a result, a judgment was made to expand, as much as reasonably possible, the types of juveniles to be covered by the research.

The following categories of children were included and excluded as foci of the study:

Categories included

1. Delinquency
2. Status offenses
3. Dependency
4. Neglect
5. Abuse
6. Mental illness
7. Emotional disturbance
8. Children with educational needs

Categories excluded

1. Adoption
2. Mental retardation
3. Developmental disabilities
4. Physical handicaps
5. Out-of-state children arrested and confined for local crimes or on courtesy warrants

After some preliminary exploration of state agency statistical and financial data, a determination was made that no single fiscal year pattern would correspond to the recordkeeping practices of the states. In an effort to facilitate the data-gathering process, a decision was reached to seek fiscal 1977 data as base year information, based upon whatever fiscal year the agency or facility used, and to obtain fiscal 1976 and fiscal 1978 data for purposes of comparison.

DEVELOPMENT OF SURVEY INSTRUMENTS

The research design led quite naturally to the development of a number of questionnaires and other instruments. The forms were numbered from #001 to #008, corresponding in number to the sequence in which they were used. A final form, #009, was a time report maintained by each project staff member regarding time spent in each state for preparing the case study.

Forms #001 through #003 were designed to progressively focus upon the most appropriate and knowledgeable people in state government to interview. Once identified, proper use of the forms allowed the interviewers to set up appointments.

Forms #004 and #005 were used to interview state officials responsible, in one way or another, for sending or receiving children out of state. Form #006 was utilized to discriminate between receiving facilities that accepted no out-of-state children in 1977 and those that did. Among those facilities receiving such admissions, the form allowed for a further discrimination between those that received more than five children and those that received less than six. Within the former category, eight facilities received the mail survey (#007) and the remaining ones were administered Form #008 during on-site visits.

After first drafts were completed, the case studies were shared with one or two state officials who had proven to be the most helpful to the project. An identical procedure was used to solicit comments from federal agency officials for their portions of the report. The final drafts were distributed to one person in each major state agency that was central to the research. Review comments were considered and, in most cases, incorporated.

FOOTNOTE

1. The 16 organizations surveyed were: (1) American Civil Liberties Union, New York, New York; (2) American Public Welfare Association, Washington, D.C.; (3) Children's Defense Fund, Washington, D.C.; (4) Child Study Center, New Haven, Connecticut; (5) Child Welfare League of America, New York, New York; (6) Child Welfare Resource Information Exchange, Washington, D.C.; (7) Department of Health, Education, and Welfare, Youth Development Bureau, Administration for Children, Youth and Families, Office of Human Development Services, Washington, D.C.; (8) Edna McConnell Clark Foundation, New York, New York; (9) National Center for Health Statistics, Health Resources Administration, Hyattsville, Maryland; (10) National Center for Juvenile Justice, Pittsburgh, Pennsylvania; (11) National Coalition for Children's Justice, Princeton, New Jersey; (12) National Council of Juvenile and Family Court Judges, Reno, Nevada; (13) New York Civil Liberties Union, Children's Rights Project, New York, New York; (14) North American Center on Adoption, New York, New York; (15) University of Chicago, School of Social Service, Chicago, Illinois; and (16) University of Michigan, School of Social Work, Ann Arbor, Michigan.

2. A Review of the Literature

PROFESSIONAL JOURNALS AND TREATISES

Professional journals have ignored to a considerable extent the issue of interstate placement of children. With the exception of articles and papers relating to compacts for the legal regulation of interstate movement, the professional literature refers obliquely to interstate palcement in studies of foster care and the need for a family-focused policy rather than a fragmented focus on the child.[1]

Despite the lack of recent professional dialogue, the out-of-state placement of children as an issue is not new. Although the issue has been quiescent until the 1970s, it was very visible 100 years ago. An anthology published prior to the first White House Conference of Dependent Children in 1909 contains four of 14 papers on out-of-state placement: Hastings H. Part, *Placing Out Children in the West*, 1884; Lyman Alden, *The Shady Side of the Placing Out System*, 1885; Homer Folks, *The Removal of Children from Almshouses*, 1894; and Robert Hedderd, *Placing Out Children: Dangers of Careless Methods*, 1899.[2]

A few treatises are worthy of note from the current body of professional literature. In a recent treatise by Nicholas Hobbs, a significant point made is that the way a problem is defined determines its solution. The basic strategy advocated is to shift policy away from the present categorical focus to one that supports the family. He argues that social services should always be viewed as a supplement to enhance child development, not as a substitute for parents, unless it cannot be avoided. While Mr. Hobbs acknowledges that labels cannot be totally eliminated, he documents some of the consequences of labeling children as handicapped, delinquent, retarded, mentally ill, or emotionally disturbed.[3]

Gilbert Steiner, with the Brookings Institution, describes the recent politics of child policy, legislation, and administration of programs.[4] The conclusions of this analysis are relatively pessimistic. He demonstrates that setting priorities weakens coalitions of advocates, while having unfocused goals undermines the responsiveness of legislators. This paradox is described from an insider's perspective, citing the development of the Children's Bureau and the Office of Child Development in the context of such specific issues as day care, Headstart, children's allowances, and health care. The dynamics of the interaction of bureaucrats, professional organizations dealing with children, advocacy organizations, and Congress are analyzed and suggested priorities for the future are discussed. The study is valuable for describing the recent past and pitfalls to avoid in the future.

A study of patterns for financing out-of-state placements offers another way of approaching the issue but, again, little can be found.[5] Other than compiling statistics as to what states pay for placement, little has been written about the sources of funds and the tracing of dollars from source to vendor. Variations of payment practices between agencies in a given state are rarely documented, while variations in payment structure between states is only a little more often recorded. The authors of *Public Payments for Foster Care* reveal the wide differences in payment for placement from one state to another. They conclude that the variety of payment systems points to the need for a systematic look at the true costs of placement.[6] The use of federal dollars by states varies widely. According to their investigations, some states attempt to fund all placements through Medicaid, while many do not; some states avail themselves of Title XX dollars, but others do not. Different state agencies within a state seem to vary widely in their use of federal dollars in paying for child-care placements.

OTHER LITERATURE AND MEDIA REPORTS

In the past five years, however, other types of literature have added to our understanding of the interstate placement issue. Governmental reports and recommendations regarding interstate placement of children have proliferated. These activities responded, in great measure, to television, radio, and newspaper exposes which received a sympathetic response from the public.[7]

The first major attention by the media to the issue was in 1972 in Massachusetts. Critics of Massachusetts'

deinstitutionalization program charged that the former population of the closed state training schools were placed in private out-of-state institutions, some of them in foreign countries. Even as the Massachusetts experience attracted favorable attention in other parts of the country, the out-of-state placement issue remained a major theme.

Illinois became the next state to be examined. In early 1973, the Massachusetts commissioner credited with the deinstitutionalization trend assumed responsibility for the child welfare agency in Illinois. He found nearly 1,000 Illinois children placed out of state. A study was commissioned for children placed in Texas and a policy for immediate return of children placed out of state was established.[8] The media at first focused on the alleged abuses to children out of state, but when children were returned to Illinois, the media focused on what happened to the returned children.

The findings of the study indicated that Illinois wasted dollars in paying for services of unacceptable quality and for services that in some cases were not needed. Abuses abounded; some of the children were physically abused, and most were psychologically abused. In addition, there was abuse in the administration of medication. Licensing procedures by Texas were declared inadequate and the lack of monitoring allowed institutions to receive more children than their allowable capacity.

One conclusion stated: "By placing a ward in an out-of-state institution which could not comply with Illinois licensing requirements, the child's right to equal protection of law is violated."[9]

The report concluded with recommendations regarding monitoring practices, placement procedures, administrative restructuring, alternatives to be made available to courts short of placement, reforms for administering guardianship responsibilities, and compensatory education opportunities for the children returned from Texas.

In Texas, meanwhile, the media began exposing unlicensed child care facilities holding out-of-state children. The Texas House of Representatives responded by establishing a Committee on Human Resources to study child care in Texas. Public hearings were held and it soon became obvious that.

> Texas is presently unable to legitimately claim that all children receiving out-of-home care are receiving the minimal levels of care and treatment which we feel is this state's responsibility to guarantee.[10]

Shortly after the committee began its deliberations, Texas was confronted with the *Morales* federal court decision, and a few months later with the *Gary W.* decision, the latter involving a Louisiana boy in a Texas institution. The committee's report was not issued until November 1974, but by then remedial steps had already been initiated.

The intensity of the media coverage of the Texas, Illinois, and Louisiana issues aroused concern in other states. Probably one of the more important works to date was a book written in 1976 by Kenneth Wooden, *Weeping in the Playtime of Others: America's Incarcerated Children.*[11] Mr. Wooden's book attracted considerable attention. He argued that incarcerated children are the victims of the very system that was established to serve them. It is written in the tone of an investigative reporter with the intent of inciting the reader to action. One chapter deals with the interstate commerce of children. The book relies heavily on secondary sources but, since there is so little reliable information about interstate placement, the anecdotal illustrations sometimes strain credibility when they are purported to be typical.

In August 1977, the *New York Times*, in a front page story, gave a review of the issue from a national perspective.[12] In part, the article was reactive to recent interest in New York state government on the issue. Several months earlier, a report was released by the New York Division for Youth, identifying over 800 children under state care in 70 out-of-state facilities in 21 states.[13] The report criticized the practices of in-state facilities, which indirectly caused the need for out-of-state placement usage, and recommended a substantial reduction in the placement of children in other states' facilities. The legislature has since considered a bill to establish an Out-of-State Placement Bureau to oversee state and local placement practices. The bill, while defeated, will quite likely be reintroduced. The public interest in New York, expressed by media stories, litigation, and legislative activity, led to another study, published in March 1978, by the New York State Council of Voluntary Child Care Agencies. The report, *Where Are the Children?*, is actually a thesis by Adeline Bliven, an MSW candidate from Rutgers University, and consists of the results of a national survey, apparently mailed to the state agency officials responsible for administering the two principal interstate compacts on juveniles.[14] Her findings verified the anomaly, expressed by others in the field, that while most states are parties to the interstate compact, they lack basic information about the children placed and have no practical means of controlling either the sending or receiving practices of their states.

Following successful litigation in returning Louisiana children from Texas facilities (*Gary W.* case), the first systematic attempt to nationally explore the issue of out-of-state placement, in the context of general placement

practices, was undertaken by the Children's Defense Fund in 1975.[15] The staff sent a two-page questionnaire to both child welfare and probation offices in a stratified random sample of 140 counties nationwide. An in-depth study of seven states followed. Finally, all 50 states were contacted regarding sending practices in placing children in other states.

The report, *Children without Homes*, listed 10 major findings particularly critical of state and federal policymakers:

1. A pervasive antifamily bias in placement decisions.
2. Children placed not only are likely to be cut off from families but from the public system responsible for the placement.
3. States fail to meet their legal and moral responsibilities to children in or at risk of placement.
4. There is no overall explicit federal policy toward children out of their homes.
5. Available federal dollars encourage the breaking up of families.
6. Federal policies fail to provide adequate procedural and substantive safeguards for families and children in risk of or in placement.
7. The federal commitment to deinstitutionalization has met with practical obstacles and paid little attention to the special needs of children.
8. Federal programs for children are fragmental.
9. Federal compliance efforts for minority children at risk of removal or in placement are nonexistent.
10. There is an absence of useful information about children out of their homes.

The major recommendations urged a reexamination by states of their placement policies and practices, as well as a case-by-case reassessment of the need to keep currently placed children in other states.

State governments, and particularly state legislatures, began to respond in strikingly similar ways. Normally, a study would be commissioned, followed by substantial amendments to state codes in such areas as licensure, judicial discretion, constraints upon the use of state funds, or reporting requirements.

In Virginia, 1974 and 1975 studies by the House Committee on Health, Welfare and Institutions, the Virginia Advisory Legislative Council Committee, and the Virginia Advisory Legislative Council Subcommittee on the Juvenile Code Revision all addressed, in one way or another, the out-of-state placement issue. As a result, the house authorized, in 1976, a subcommittee on placement of children to report back for the 1977 session.[16]

Specifically, the Virginia study indicated the following concerns and problems:

1. That the number of children sent to out-of-state private facilities by traditional child-placing agencies is approximately the same as for in-state placements. (No figures were cited for placements in public facilities.)
2. That the costs of making out-of-state placements are significantly higher to traditional child-placing agencies than for in-state placements.
3. That children placed out of state are scattered throughout 29 states around the country.
4. That state residential centers are lacking in Virginia.
5. That licensure of public and private residential facilities is inadequate.
6. That on-site monitoring and evaluation of services and programs provided by residential facilities and institutions are almost nonexistent for children placed out of state.
7. That explicit, standard criteria are generally established by state and local child-placing agencies governing out-of-state placements. Priority in the decision is usually given to considerations for programmatic costs, proximity to parents or relatives, and child preferences.

In late 1973, California began a study on out-of-home placement of children.[17] Massachusetts and Indiana established task forces to study out-of-state placements. The Maryland legislature considered but defeated a bill to prevent out-of-state placements. Florida began investigating its licensing practices following a CBS 60 Minutes segment titled "Interstate Commerce in Kids."

New Jersey produced three different studies of out-of-state placements between 1975 and 1977.[18] The first New Jersey study viewed general placement practices in the state and highlighted out-of-state placements. The next two studies focused on out-of-state placements. Although education and mental retardation agencies placed children out of state, the study groups paid scant attention to them. Rather, they concentrated their efforts on the child welfare agency. As of May 31, 1977, 4 percent of the 45,000 children served by this agency (1,793 children) were in placement. Of these, it was reported that 595 were placed in 43 facilities in other states, although 372 were within 50 miles of the state line.

The New Jersey Department of Human Resources, Division of Youth and Family Services, responded to the

studies by issuing a plan to curtail out-of-state placements.[19] Specifically, they ceased referrals to 19 of the 21 out-of-state facilities beyond 50 miles. The report projected a reduction from 223 children to less than 50 children beyond 50 miles by June 30, 1978. There was to be a reduced reliance on facilities within 50 miles of the state line by developing in-state resources. One hundred and fifty new beds were to be available in New Jersey within the time period.

A reasonable conclusion, after reviewing the literature, is that most of it can be divided into two types. The first might be characterized as exposes which advocate various changes, based upon fragmentary, nationwide data. The other type is composed of governmental or quasi-governmental reports which, while quite factual, restrict the scope of inquiry to children from the individual states under investigation.

FOOTNOTES

1. For example, Ralph Brendes, *Interstate Supervision of Parole and Probation*, Crime and Delinquency, vol. H, no. 3 (July 1968), pp. 253-60.

2. Published in *Care of Dependent Children in the Late Nineteenth and Early Twentieth Century* (New York, N.Y.: Arno Press, 1909).

3. Nicholas Hobbs, *The Futures of Children: Categories, Labels and Their Consequences* (San Francisco, Calif.: Jossey Bass Publisher, 1975).

4. Gilbert Y. Steiner, *The Children's Cause* (Washington, D.C.: The Brookings Institution, 1976).

5. Data available periodically from the National Center for Social Statistics, U.S. Department of Health, Education, and Welfare.

6. James D. Cully, Dennis F. Healy, Barbara H. Settles, and Judith B. VanName, "Public Payments for Foster Care," *Social Work*, vol. 22, no. 3 (May 1977), pp. 219-23.

7. A few of the newspapers that have featured stories on the issue since 1972 are the *Boston Globe*; *Chicago Sun-Times*; *Chicago Tribune*; Austin, Texas, *American Statesman*; Houston *Post* and *Chronicle*; *Baltimore Sun*; Richmond, Va. *Times-Dispatch*; Trenton, N.J. *Trentonian* and *Times*. Electronic media also focused on the question. See National Broadcasting Company, Radio Division, *Out of State, Out of Mind*, 1977, on placement of children from New York and New Jersey in foster care institutions in other states.

8. Patrick A. Kennan, *An Illinois Tragedy: An Analysis of the Placement of Illinois Wards in the State of Texas* (mimeographed, August 1973). See also, Illinois Commission on Children, *Review of Out of State Placement of Children and Return of Same* (Springfield, Ill.: 1974).

9. Ibid., p. 139.

10. From transmittal letter to the Speaker of the House from Texas House Committee on Human Resources, accompanying *The Report on the Interim Study on Child Caring in Texas*, (Austin, Texas: November 1974).

11. Kenneth Wooden, *Weeping in the Playtime of Others: America's Incarcerated Children* (New York, N.Y.: McGraw-Hill Book Co., 1976).

12. Feature story by J. C. Borden, "Human Welfare Groups Concerned Over Dispersal of Problem Children," *New York Times*, August 14, 1977.

13. William H. Creighton, *The Placement of New York Children Out of State for Treatment* (Albany, N.Y.: New York Division for Youth, 1977). See also, New York Legislative Commission on Expenditure Review, *Foster Care for Children* (Albany, N.Y.: 1975).

14. New York State Council of Voluntary Child Care Agencies, *Where Are the Children?* (Albany, N.Y.: 1978).

15. The Children's Defense Fund, *Children without Homes: An Examination of Public Responsibility to Children in Out of Home Care* (Washignton, D.C.: 1977).

16. Subcommittee on the Placement of Children, *Report of the House of Delegates, Committee on Health, Welfare and Institutions to the Governor and the General Assembly of Virginia* (Richmond, Va.: 1977).

17. Jessica S. Pers, *Government as Parent* (Berkeley, Calif.: Institute of Governmental Studies, University of California, 1976).

18. New Jersey Citizens Committee for Children, *Long-term Residential Care of Children in New Jersey: A Report of the Residential Task Force* (Montclair, N.J.: December 1975); New Jersey Office of the Public Advocate, *Out of State Placements by the Division of Youth and Family Services* (Trenton, N.J.: April 1977); and New Jersey State Legislature, Office of Fiscal Affairs, *A Study of the Division of Youth and Family Services Out of State Placement Procedures* (Trenton, N.J.: 1977).

19. New Jersey Department of Human Services, Division of Youth and Family Services, *A Plan to Address the Issue of the Placement of Children in Residential Facilities Outside of New Jersey* (Trenton, N.J.: 1977).

3. The Law of Interstate Placements

The interstate placement of children is a practice of obscure and virtually unexamined legality. In practice, courts and executive agencies, through their official decisions and informal concurrence, send children across state boundaries for placement in facilities and institutions far from their home communities. Basic questions concerning the legality of this practice seldom appear to have been asked. Do courts and executive agencies have authority to send children out of their home states? Even if legislatures have granted such authority, are there constitutional impediments to the practice? What certainty do sending states have that their out-of-state placement orders will be honored in receiving states? And, what continuing legal control—beyond mere cessation of subsidies or payments—can a sending state exercise over a child in a receiving state?

The law of interstate placements easily divides itself into two parts. One part, considered in this chapter, involves the few court decisions and statutes which touch issues involving interstate placements. The other part of the law is composed of the interstate compacts which attempt to give some regularity to the practice of interstate placements. The principal compacts—the Interstate Compact on the Placement of Children, the Interstate Compact on Juveniles, and the Interstate Compact on Mental Health—are discussed in Chapter 4.

THE CONSTITUTIONAL SETTING

In recent months, the interstate placement of children has come under the scrutiny of federal courts. Courts are being asked to rule on the legality of state practices which result in the placement of children from one state in institutions located in another state. One recent case, *Gary W. et al.* v. *State of Louisiana*,[1] which has received wide attention, resulted in the removal of all Louisiana youths who had been placed in Texas institutions. *Gary W.* was a class action comprised of Louisiana youths who had been placed in Texas either by the direct action of Louisiana state officials or whose placements were financially supported by state government. The plaintiffs claimed that the Texas placements deprived them of treatment rights to which they were entitled under the Constitution and federal statutes and, further, "the mere fact of their placement in out-of-state facilities is itself a denial of adequate treatment and therefore violates federal statutory and constitutional rights."

To support their claim that out-of-state placements were per se illegal, the plaintiffs asserted that the

> primary objective of institutional treatment must be the reintegration of children into their families and home communities. . . . The family of a child placed in residential treatment in Louisiana has the opportunity to participate in the child's treatment program and life by visiting the child and having the child make day or overnight visits home. . . . When institutional care is required it should be afforded near the parent's home; its goals must be the return of the child to the home; and the placement of the child must be in accordance with the inexorable application of "least restrictive alternative:" that is, the kind of treatment that is both nearest the home and imposes the least of all possible restrictions on the child's freedom.

The *Gary W.* court decided the case on "right to treatment" principles, an evolving concept of constitutional law. Cases involving the right to treatment are premised on due process and equal protection grounds, and Eighth Amendment principles. Typically, the cases arise in situations where the state exercises custodial powers over an individual and restricts his liberties. The statutory rationale underpinning the state's assumption of custodial powers is the individual's need for some type of treatment, rehabilitation, or therapeutic services. For the most part, right to treatment cases involve mental patients, prisoners, and institutionalized juveniles.[2]

Where courts have held that individuals have a right to treatment, the right is approached as a quid pro quo: if the state justifies restrictions on an individual's liberties by his need for services, then the state must provide the needed services as long as the liberties are restricted. If the state does not or cannot provide the services, it loses its legal basis for restrictions upon liberty.

The concept of the right to treatment does not necessarily involve interstate placements. The interstate aspect will likely arise in situations where a state has only limited specialized treatment resources, or where they are not available even outside the state. Where interstate aspects arise in a right to treatment case, other peripheral issues, such as a court or executive agency's legal authority to make such placements, are likely to arise and overshadow the right to treatment issue.[3]

While the right to treatment has chiefly been used to get an individual to appropriate treatment without regard to state boundaries, the *Gary W.* case was an attempt to use the principle to withdraw children from placements. Even though the *Gary W.* court granted plaintiff's relief, it did not hold that the right to treatment, federal law, or the Constitution provides a blanket prohibition on out-of-state placements. The *Gary W.* court held:

> What is required is that the state give thoughtful consideration to the needs of the individual, treating him constructively and in accordance with his own situation, rather than automatically placing in institutions, perhaps far from home and perhaps forever, all for whom families cannot care and all who are rejected by family or society.

The court rejected the plaintiffs' claims that legal principles forbid Louisiana officials from placing children in Texas institutions and require them to place children in their own communities.

> But the *a priori* thesis that Texas and all other states than Louisiana are tainted must be rejected. Each child must receive proper care wherever that child is placed. What is proper must be determined separately for each child based on that child's personal attributes and needs. What is proper for a particular child includes consideration not only of whether the child should be placed in an institution or treated in the community; it also includes consideration of the kind and geographic location of the institution or place of treatment.

The *Gary W.* court's refusal to issue a blanket prohibition on out-of-state placements is consistent with other decisions that examine an individual's right to association with family and friends. Although premised on other constitutional grounds than the right to treatment, these other cases examine how far a state may remove a person-in-custody from family and friends.

Much court action, particularly in the criminal and juvenile area, necessarily involves interference with family relationships. Dependency and neglect statuses presume that a court must interfere with a child's family relationship for his own protection. Similarly, incarceration always interferes with an inmate's relationships with family and friends. Yet, some recent challenges to court and prison officials' actions have been based partially on their interference with family relationships.

One early mention of the notion of a right to family and friends appears in *In re Gault*, where the conditions that give rise to due process rights include confinement in institutions that remove a child from "mother and father and sisters and brothers and friends and classmates."[4] In the *Gault* case, which did not involve interstate placement, the Court, through Mr. Justice Fortas, nevertheless held that where confinement deprives a child of family and friends, due process safeguards should not be denied. Similarly *Morales* v. *Turman* criticizes the use of Texas juvenile institutions that remove juveniles great distances from their home communities.[5]

While, as noted in the cases cited, an individual's associational interest with family and friends was always not legally sufficient to prevent state action, in other areas some legal significance appears to be evolving.[6] Due process rights attach when the state brings dependency or neglect proceedings to affect a child's relationship with his parents.[7] Similarly, there is an increasing tendency to accord even to children some legal protection for their "imperfectly formed" relationship with a foster parent.[8]

Given the unsettled constitutional principles applicable to interstate placements, a second approach to testing their legality involves basic issues of statutory authority to make such placements. A recent case, *Sinhogar et al.* v. *Parry et al.*, is testing the authority of New York officials to place youths in out-of-state facilities.[9] The *Sinhogar* plaintiffs allege four constitutional defects in New York interstate placement practices. First, the particular placements involved constitute denials of plaintiffs' right to treatment guaranteed by the Fourteenth Amendment. Second, by sending plaintiffs to out-of-state facilities, "thus separating them from their family and community," without a hearing to determine the appropriateness of the placements, the Fourteenth Amendment is allegedly violated. The third and fourth constitutional defects alleged by the plaintiffs are that the New York practice of placing some children within

New York state and others outside the state, and the granting of out-of-state placement hearings to delinquent youth but not to dependent children constitutes a denial of equal protection of the law.

In addition to due process and equal protection claims, the plaintiff's complaint challenges out-of-state placements because the institutions involved "are not authorized agencies as defined in Social Services Law 371(10) and which are not visited, inspected or supervised by the New York State Board of Social Welfare." Other defects of the placements cited in the complaint include noncompliance of the out-of-state facilities with New York standards for child-care institutions, failure to assure that the programs are appropriate for each child's needs and, by implication, the discouragement of the development of appropriate facilities within New York. If ultimately decided on the basis of the New York statute, *Sinhogar* will be a precedent-setting authority and will provide direction for understanding statutes in other states which authorize official placements.

STATUTORY AUTHORITY FOR COURT-ORDERED OUT-OF-STATE PLACEMENTS

Most juvenile court statutes provide a wide range of dispositional options, irrespective of the type of adjudication. Typically, the court is given options ranging from home placements to institutional commitments. Also, typically, these dispositional alternatives are not identified by any geographical limitations restricting court placements to within state borders.[10]

Can a court commit a youth to an out-of-state facility, absent specific statutory authorization? The few older court decisions on the question do not permit courts to make such out-of-state placements, while the more recent decisions tend toward construing court dispositional authority as broadly as possible in these situations. One 1947 Missouri case, *In re Church*, held that a court could not commit a youth to an out-of-state institution under a statute that was ambiguous on the point.[11] Similarly, a former Michigan statute was interpreted by the state attorney general to not authorize out-of-state placements.[12] One Pennsylvania court, without reference to a specific statute, held that:

> the action of the (trial) court placing (the child) under the jurisdiction and subject to the control of laws of another state and in the control of an institution not responsible to the court making the order or the laws of this Commonwealth, cannot be sustained.[13]

More recent cases decided under statutes as nonspecific as those considered by the Michigan attorney general and the *Church* court, take a more expansive view of juvenile court placement authority. Three recent cases involving out-of-state placements give broad interpretation to court authority to control placements.[14]

The statutory authority to place a youth in "some other suitable place" is a dispositional power common to juvenile court laws. "Suitable" might be construed to include or exclude out-of-state placements. Two cases have held that a juvenile court may make such placements under this statutory wording. In *Reyna* v. *Dept. of Institutions, Social and Rehabilitation Services*, an Oklahoma court construed its powers to place a dependent child "in the custody of a suitable person elsewhere" to give it authority in choosing between homes in Texas and in France.[15] One interesting feature of this case is the court's unexamined assumption that a significant difference between the two competing placements was that it would lose continuing supervisory jurisdiction over the child only if the placement were into the French home. The court nevertheless decided to place the child in the French home.

The second case involved a Georgia statute that permitted placements with some other suitable person. Georgia had enacted the Uniform Juvenile Courts Act which, in addition to placement with other suitable custodians also has specific provisions authorizing out-of-state placements. The court, *In re A.S.*, permitted such placements under either statute.[16]

Since juvenile courts are creatures of statute, their dispositional authority is based on the construction of statutory wording. The specifics of each state's statutes, therefore, are important in understanding out-of-state placement authority. For the most part, dispositional statutes are silent on the question of geographic limitations; a few states, however, do have relevant laws that circumscribe the dispositional powers of juvenile courts in geographic terms.

Statutes with Specific Geographic Limitations

Indiana is unusual in limiting a court's dispositional powers to either institutions "situated in the State of Indiana"[17] or to "child placing agencies in the state."[18] The one exception to these geographic limitations is when an Indiana court is permitted to approve a public or charitable guardian's request for a change of a ward's residence to another state.[19] Although courts in certain other states may place children out of state, agencies having custody or

guardianship may not do so without court approval. Authority requiring juvenile court approval for out-of-state placements is found in Idaho, Utah, and Wyoming.[20] In these states, even if the juvenile court commits a youth to a private agency, which later decides to place the youth out of state, the agency must return to the court and obtain its consent to the out-of-state placement.

Statutes with Specific Authority to Place Out of State

States that have enacted the Uniform Juvenile Courts Act, or variations of it, such as Georgia, Louisiana, North Dakota, and Tennessee, permit their courts fairly wide and detailed authority regarding out-of-state dispositions.[21] Portions of this uniform act attempt to address the problem presented when the family of a child who is under the court's jurisdiction plans to relocate to another state.

The uniform act also permits a court to make out-of-state placements to a "suitable person in another state."[22] An interesting feature of this provision is that if the other state has also enacted the uniform act, the sending court may request the juvenile court in the receiving state to assign a probation officer or other official to supervise the child in placement. No mention is made regarding the use of interstate compacts. As a matter of practice, reciprocal supervision takes place in most states usually through a compact, irrespective of the adoption of the uniform act, despite this authority of the courts to make such placements directly.

A third feature of the uniform act that may be applicable to out-of-state placements is the recognition given to receiving state probation officers and other officials to visit, counsel, control, direct, take into custody, and return children to the court of original jurisdiction. This last provision of the uniform act is, in effect, a grant of comity for the discretionary decisions of the respective state probation officers.

A common statutory provision permits juvenile courts to place a youth out of state if the facility is licensed by an agency in the receiving state "analogous" to the agency which licenses such facilities in the sending state.[23] North Carolina permits its juvenile courts to place out of state where it will result in the return of a nonresident child to his home state.[24] Missouri juvenile courts are permitted to place a juvenile in an out-of-state association, school, or institution, if the agency in the receiving state overseeing the importation of children gives it approval.[25]

Oregon has one of the more detailed statutes authorizing out-of-state dispositions.[26] The Oregon statute permits such dispositions when:

(1) There is an applicable interstate compact,

(2) There is an agreement with another state, or

(3) There is "an informal arrangement" with another state permitting the child to reside there while on probation or under protective supervision, or to be placed in an institution or with an agency in another state.

The Oregon statute contains the significant limitation that different legal categories of juveniles cannot be commingled in out-of-state placements to an extent greater than that permitted under Oregon law.

EXECUTIVE AGENCY AUTHORITY FOR OUT-OF-STATE PLACEMENTS

Similar to statutes affecting juvenile court powers, those authorizing local and state executive agency placements seldom mention geographical limitations. As an example, Nebraska's Department of Correctional Services is permitted to "use other public facilities or contract for the use of private facilities for the care and treatment of children in its legal custody."[27] Whether this permits out-of-state placements is not clear, but it is the typical phrasing in statutory descriptions of executive placement authority. Curiously, Nebraska has some subsequent statutory language which seems to indicate that out-of-state placements are authorized or, at least, not forbidden. Still referring to the Department of Correctional Services, the statute continues: "Placement of children in private or public facilities not under its jurisdiction shall not terminate the legal custody of the department."

This wording still contains ambiguity: the reference to "not under its jurisdiction" might signify geography, or the department's lack of authority over private facilities, or a division of authority between several state departments, each having some responsibility for children's services.

Another Nebraska statute regarding the Department of Correctional Services has a specific reference to placements out of state. In this statute, the department is authorized to place a person in institutions "in another jurisdiction" or "to an out-of-state institution." Whether these two phrases should be read in *pari materia* is not clear, but it is probably safe to assume that the lack of clarity on this point in the first statute gave rise to the latter statute.[28]

Statutes with Specific Geographic References

Reference to out-of-state placement authority may be clear or ambiguous. Louisiana and Vermont have ambiguous references to geography in their laws. In Louisiana, the Division of Youth Services, in developing a regional system of child-caring institutions, is directed to establish them "in or near places in the state."[29] Vermont, equally ambiguous, permits the commissioner of the Department of Corrections (for delinquent children) and the commissioner of the Department of Social and Rehabilitation Services (for CINS) to place children in "private or public agencies of the community where their assistance appears to be needed or desirable."[30]

Alaska and Connecticut have specific authority for executive agency out-of-state placements. Alaska's Department of Health and Social Services is empowered "to arrange for care of every child inside or outside the state."[31] Connecticut authorizes its commissioner of the Children and Youth Services Department to transfer children "to any appropriate resource or program administered or available to the department . . . within or without the state under contract with the department."[32] The commissioner of the Department of Social Services is given authority regarding children to "make reciprocal agreements with other states and with agencies outside the state in matters relating to the supervision of the welfare of children."[33]

Michigan is unusual in that the executive department is authorized to "place a state ward in a public or private agency incorporated under the laws of another state or country and approved or licensed by the other state or country."[34] Missouri's Division of Youth is authorized to place children out of state when it appears that plans for a child's rehabilitation have been made in some other state and the parents and director of the Missouri department give their approval to such placement.[35]

Delaware's Division of Social Services is given limited out-of-state placement authority when it concludes that a dependent child is improperly placed. Although not specified, it appears that this power only applies to children who were brought into the state under its importation statute.[36] In other words, this appears to be a re-placement authority only.

RECOGNITION OF COURT DISPOSITIONAL ORDERS IN OTHER STATES

Whether or not judges and other officials have specific statutory authority to make out-of-state placements, such placements are made. Beyond the basic question of the authority to make these placements, other questions arise concerning the legal effect of such placements. Are they "legal?" Are sending-state orders enforceable in a receiving state? Must a receiving state accord recognition to subsequent orders from the sending state?

Such questions raise many unresolved legal issues in the area of comity, the constitutional principal of full faith and credit, and conflict of laws. Modern decisions tend to ignore these questions and resolve cases on other grounds. In one case, *State ex rel. Juvenile Department of Multnomah County* v. *L.*, the Oregon Court of Appeals brushes aside the question of out-of-state enforceability:

> Any question concerning the court's authority to exercise continuing jurisdiction over L. by ordering her placement in the Chazen Institute [an out-of-state facility] is put to rest by the legislature's 1973 amendment to ORS 419.507 which provides:
>
> "Commitment of a child to the Children's Services Division does not terminate the court's continuing jurisdiction to protect the rights of the child or his parents or guardians."[37]

Older cases, rather than ignoring jurisdictional questions and treating out-of-state placements as problems of statutory authorization, more directly addressed these issues. Two such cases, which reached opposite conclusions, grew out of marriage disputes which challenged the placement of children with out-of-state custodians.

The earlier case, *Comm. ex rel. Lembeck* v. *Lembeck*, involved a Pennsylvania court order placing a child in a New York institution.[38] One of the parents challenged the order's legality on the basis "that the child has been committed to an institution not within the jurisdiction of the courts and that, therefore, the order is unauthorized and legally inoperative." The appeals court agreed with the parent and held that:

> It may be stated as a general proposition that no state can exercise jurisdiction by judicial process or otherwise over persons or property outside its territorial limits. There are certain exceptions to this rule not relevant as applied to the case under consideration. Little discussion is necessary to show that the institution to which this child was

> committed is not subject to the jurisdiction of the court making the order. It is not bound to comply with the order, not if it undertakes so to do is to subject it to the control or direction of the court with reference to the manner in which the appointment shall be exercised. The authority of every tribunal is restricted by the territorial limits of the state in which it is established and any attempt to exercise authority outside of those limits must be regarded as an illegal assumption of power. [*Pennoyer* v. *Neff*, 95 U.S. 714.] The child in this instance is in a sense a ward of the court; she is within the State of Pennsylvania; she is entitled to the protection which the laws of this State give her, and while the order was doubtless made wholly in the interest of the child and with regard to her welfare, the action of the court, placing her under the jurisdiction and subject to the laws of another state and in the control of an institution not responsible to the court making the order or the laws of this Commonwealth, cannot be sustained. As no tribunal territory established by this State can extend its process beyond its own territory so as to subject persons to its decisions, the result of the order complained of is to place the child in an institution over whose management the commiting court has no control and to remit the contending parents to a foreign jurisdiction for determination of a question lawfully subject to a court of competent jurisdiction.

However, in a case contemporary to *Lembeck*, a different conclusion was reached. A child was transferred by court order to an out-of-state third party as part of a divorce proceeding. One of the child's parents challenged the order as not based on any statutory authority for out-of-state placements. The court rejected this challenge, but considered as relevant whether the court might lose jurisdiction over the child by placing it out of state.

> Defendant's contention that the policy of the law to make effective its decrees is of controlling importance is without merit. The hazards of ineffective enforcement arising from the mere change of a ward's residence to another state are not such as to prevent the court from giving fullest force and consideration to the child's greatest welfare, which, as we have seen, is always the paramount and determining factor. . . . It is unnecessary whether a decree for the custody of a minor . . . is a judgment within the protection of the full faith and credit clause of the Federal Constitution . . . ; it is sufficient that, under the principles of comity customarily exercised among the states, the courts of each will give appropriate force to the official character of a custodian appointed in another state and recognize him, in the absence of changed conditions.[39]

Comity

Comity is legal principle that permits the courts of one jurisdiction to recognize and enforce rights created in another jurisdiction when there is no overriding reason for not giving such recognition. Rules of comity are made by both courts and legislatures. When legislatures statutorily define the recognition that courts may accord to out-of-state judgments, they have legislated rules of comity. One typical reason for not applying the principle of comity to a foreign judgment is that the foreign decree is inconsistent with the substantive law of the enforcing jurisdiction. Another reason is simply that the decreeing court in the foreign state was without authority to render the judgment. Comity is not based upon constitutional law, but is an out-growth of common law and international law doctrines which define the inherent powers of courts and legislatures.[40]

An example of comity legislation that is applicable to the topic of out-of-state placements of juveniles is the Uniform Child Custody Jurisdiction Act. A principal motivation for drafting this act was the desire to reconcile the conflicting decisions that had developed in case law involving the recognition of foreign child custody determinations arising from divorce and other postmarital disputes.[41]

The rules of comity provided by the act permit jurisdiction for a child custody determination if the state in which the deciding court sits is:

(1) The child's home state;

(2) The child and another party to the issues have a significant connection with that state and there is available substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(3) The child is present in the state and there is an emergency requiring the court to take action for his protection; or

(4) No other state could take jurisdiction under the statute.

The significance of this act for out-of-state placements of children is that it provides an orderly set of rules which will permit a sending state court to anticipate what recognition will be given to its orders affecting the custody of a child in out-of-state placement. Nineteen states have enacted this uniform act.[42]

Another statutory basis for the extension of comity to official placements can be found in child import/export statutes. These statutes, discussed in detail below, are found in a majority of states. No case law was found describing these laws as legislative grants of comity to court and executive agency interstate placements. The effect, however, is to provide grants of comity to interstate placements.

The clearest example is the Wyoming importation statute, which is applied to every "person, firm, partnership, corporation, state or political subdivision or agency thereof" bringing or sending children into Wyoming. For interstate placement decisions to be recognized in Wyoming, officials in other states must only comply with Wyoming's notice and reporting requirements. Wyoming is unusual in its specific reference to governmental placements. Another interesting feature of the Wyoming law is its implied exemption from penalties for officials who fail to comply with the requirements of the importation statute.[43]

A few other state importation laws have coverage that might contain specific recognition of other state official placements. The Delaware statute is applied to "any person, institution, agency, association, corporation, bureau, board or commission outside Delaware."[44] The Oregon statute is applied to a "person, agent, agency or institution of another state."[45] South Dakota applies its law to agencies "operating under the laws of another state."[46]

Besides the child import/export statutes, another area where rules of comity have developed which affect interstate placements is found in the recognition accorded guardians appointed in sister states. Comity in this area is a mix of common law and statutes. While the development of comity principles applied to guardians and wards has occurred independently of the import/export statutes, in most states both sets of comity principles may be equally applicable to situations involving interstate placements. This is likely because the parties involved in interstate placements will typically have a guardian status of one sort or another. The difficulty in concluding whether to apply the comity rules for recognizing a guardian's authority involved in an interstate placement results from the diverse meanings attached to the phrase "guardian and ward" and "ward of the court."

In most states, a youth can become a "ward" by court order following either of two judicial procedures. One process is by application to a probate court by a third party for letters of guardianship. Typically, these are special statutory proceedings independent of delinquency, status offense, neglect, or dependency proceedings. A second court process resulting in the appointment of a guardian for a child involves juvenile court proceedings. Typically, an adjudicated delinquent or dependent child is referred to as a "ward of the court" and the person or facility receiving custody of the child is called his "guardian."

The rights and duties for the care and custody of a child imposed on a guardian under either process are probably not significantly different (except as to liability for costs of maintenance of the child and conservancy of his estate); however, what is not clear is whether the guardianship of wards placed out of state is identical for appointments under each procedure.

One case, *Pfortenhauer* v. *Hunter*, illustrates a type of situation where a court will recognize a guardianship created in another state.[47] After denying the applicability of an interstate compact as a vehicle for returning the ward to Nevada, the Oklahoma Supreme Court observed that:

> The guardian voluntarily invoked the jursidiction of the Nevada court. She sought and obtained letters of guardianship and accepted the trust and responsibility the Court reposed in her to faithfully execute her duties as guardian. She is now estopped from denying the jurisdiction which she invoked. . . . Neither is she able to divest that court of jurisdiction over the guardianship by removing herself and the child from the territorial limits and refusing to return because her removal from Nevada was fraudulent.

Where an out-of-state facility accepts a placement from a court and is appointed guardian, the principle suggested by the Oklahoma Supreme Court might be applicable to subject the facility as guardian to orders from the sending court: the voluntary acceptance of the court's appointment as guardian of a child enables a court to continue its jurisdiction after the child has left the state.[48]

Since this principle has only been applied in probate cases, there is no certainty that it is equally applicable in cases involving guardians appointed by courts following adjudication of delinquency, status offenses, dependency, or neglect.

Full Faith and Credit

The second principle that is applicable to out-of-state placement orders is the full faith and credit clause of the U.S. Constitution. This requires that judgments of a sister state's courts be accorded recognition. However, recognition and enforcement of a sister state judgment is required only to the extent that the rendering court had jurisdiction over the parties and subject matter when the decree was made, that the court satisfied the requirements of due process, and that the judgment rendered was a final order.[49]

This last point may be significant for out-of-state placements because, in the majority of cases, they may not be final decisions. Because juvenile courts normally regard their jurisdiction as continuing throughout the period of placement, the full faith and credit clause might not require enforcement of the original decision in a receiving state.[50]

A major problem inherent in the application of the principles of comity and full faith and credit to juvenile cases is that neither principle is applicable to the enforcement of another jurisdiction's penal judgments, including such diverse court decrees as convictions for crimes and public attempts to enforce delinquent tax bills. Because the exact quality of juvenile court judgments is becoming increasingly ambiguous—whether they are criminal or civil, or whether they create penalties or duties, benefits or rights—justifying out-of-state enforcement of these judgments on the principles of comity or by full faith and credit would have unknown legal effects.

Long-Arm Statutes

"Long-arm statutes" is a term applied to legislation that permits courts to acquire personal jurisdiction over parties outside the boundaries of a state. Long-arm statutes base this extension of jurisdiction on events occurring within the state which involved the person in question, usually a civil defendant. Typical events that activate long-arm jursidiction are contracts and torts.

The typical use of such statutes in cases of interstate placement appears to relate mostly to agreements between the sending agency and the receiving facility, specifying such items as financial arrangements, notice requirements for changes in circumstances, and methods for the return of children to the sending state.[51]

If the agreement is approached merely as a contract, it is enforceable by a court as any other contract. If this contract were used to effect an out-of-state placement, most long-arm statutes would give a court in the sending state jurisdiction over enforcement of the contractual terms.

The difficulty involved in this approach is that such a contract for the transfer of physical custody over a child might not be viewed by a court as an ordinary contract. It is not clear whether courts of general jurisdiction would accept such a case because of the contractual elements, or shunt the case to a juvenile court because custody of a juvenile was involved. One trend that further obscures the contractual elements in the situation is the willingness of some courts to recognize rights of children in the relationship that they form with foster parents.[52]

Besides the tendency for the custody and care issues to obscure contractual issues, another difficulty involves the application of contract remedies to situations involving breached agreements for child care. Contracts usually only give rise to money damages for their breach. In the case of a sending agency trying to enforce such contractual terms as "standards of care" or "return of custody," money damages would obviously be inappropriate. The only other contractual remedy normally available would be a suit for specific performance of the contract. Specific performance is an equitable remedy available when the remedy at law is inadequate. If the contract between the sending agency and the receiving facility is not a contract for personal services (which normally is not entitled to specific performance), and if the standards of care or conditions giving rise to return of the child are specified in the contract, specific performance might provide a method for sending agencies to regulate out-of-state placements. Return of a child could be effected, of course, by termination of payments, but improvement of standards could not be controlled through this method.

One recent development in long-arm statutes that might be useful for the enforcement of out-of-state placements is their extension to the field of domestic relations. Within the last seven years, long-arm statutes, which traditionally have been used only for contracts and torts, have been increasingly applied to divorce, alimony, and custody proceedings.[53] Some states have expanded their long-arm statutes to give state courts very broad jurisdictional bases. Oklahoma provides:

> (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's omission . . .
> (b) Maintaining any other relation to this state or to persons or property . . . which

> affords a basis for the exercise of personal jurisdiction by this state consistently with the constitution of the United States.[54]

A broad long-term statute such as this would permit a sending state agency to seek enforcement of an out-of-state placement contract in courts within the sending state.

ADMINISTRATIVE REGULATION OF INTERSTATE PLACEMENTS

One type of statute common to many state codes simultaneously regulates the importation and exportation of children. Typically, these statutes describe the regulated activity as "importation of" and "exportation of" or "bringing or sending into" and "taking or sending out" children. These particular words were probably used rather than immigration or emigration because the laws are not directed at the children but to the activities of their custodians. A few states have recently adopted the phrase "interstate placement" to describe the type of activity regulated in these statutes, which suggests that import/export statutes and interstate placement statutes are beginning to cover the same type of activity.[55] Throughout this discussion, however, the words importation and exportation are used simply for clarity.

Typical techniques of regulation found in these statutes include performance bonds; licensing, inspection, and reporting requirements by receiving agencies; and specific prohibitions against the importation of certain types of children.

Alabama's statute provides an example of the typical techniques of regulation found in these statutes.

> No person or agency shall bring or send any child into the state of Alabama for the purpose of placing him or procuring his adoption or placing him in any child-care facility, as defined herein, without having first obtained the consent of the department. The department shall have the power to impose and enforce reasonable conditions precedent to the granting of such consent; and such conditions shall be for the purpose of providing the same care and protection for the child coming into the state of Alabama for placement or adoption as are afforded to a child who is born in the state of Alabama.[56]

The first set of conditions listed gives the department authority to inspect proposed adoptive parents' and foster parents' homes and to receive information about the child from out-of-state agencies. Following these provisions, regulations for other placements are provided.

> The department shall be authorized to make a thorough investigation of any child-care facility to which any child is being brought or sent to determine conformity to minimum standards prescribed herein for approval or licensing and to determine the suitability of such child-care facility for the care, supervision, training and control of said child; (6) in case said child, subsequent to being brought into the state of Alabama, becomes dependent, neglected, or delinquent prior to his adoption or becoming of legal age of majority, said child shall be subject to the provisions of chapter 7 of Title 13, Code of Alabama, 1940. . . . (7) the child will be placed in conformity with the rules and regulations of the department; (8) the person with whom the child is placed shall be responsible for his proper care and training; (9) the department shall have the right of visitation and supervision of the child and the home or the child-care facility in which he is placed until adoption becomes final or the child becomes eighteen years of age; (10) the department may, pursuant to the provisions of this article, prescribe the conditions of an agreement or contract with the designated out-of-state agency, when a child is brought into the state of Alabama. The person or agency receiving the child in Alabama shall report to the department at such reasonable times as the department may direct, as to the location and well-being of the child, so long as he shall remain within the state and until he shall have reached the age of 18 years or shall have been legally adopted.[57]

The Alabama statute's requirements for notice and consent, inspection and standards, and reports are typical elements of regulation in all of the import/export statutes. Such regulations are designed to involve the state child-care apparatus in the care of all children in its state, regardless of their geographical origin.

Importation

By far, the most common regulatory statute circumscribes the importation of children. While these laws usually limit their coverage to cases of adoption, they are included here because of the ambiguity of the full extent of the meaning of the phrase, "placement for adoption." The legal meaning of placement for adoption can be based on the intent of the party placing a child or that of the party receiving a child; it might be based on the legal status of a child or his relationship with his parents; or it could refer to the legal relationship between a placed child and the placing custodian.

In many "placement for adoption" statutes, the place is not mentioned: it might be an orphanage, a group home, or a family home. In the case of a placement into a family's home, where all of the parties agree that a child will remain in the home and be adopted, and an adoption actually occurs, the situation is readily understood to be a "placement for adoption," based on the intent of the parties involved. In the two former situations, the intent might be to place the child until adopting parents can be found or until an adoption actually takes place. In South Carolina, the attorney general has interpreted that state's import law to properly apply to placements subsequent to the termination of parental rights "regardless of whether, where or when an adoption proceeding is actually begun."[58]

Activities Regulated

States have adopted a variety of language to describe the kinds of importation placements that are regulated, sometimes appearing as a part of or in connection with the state's laws which license foster homes and child-care facilities. Since there is no case law on the subject, it is impossible to conclude how similar or diverse the activities covered by the various statutes might be. The following list summarizes the ways in which receiving states' activities are listed in the various importation statutes:

Importation for placing or caring in any home or institution.[59]
Importation for care or supervision.[60]
Importation for placing him or procuring adoption or placing him in any child-care facility.[61]
Importation for placing or boarding in a family or home with a view to adoption, guardianship, custody or care.[62]
Importation to place in a foster home or procure an adoption.[63]
Importation to place in foster care or possible adoption.[64]
Importation to place in family home or for adoption.[65]
Importation for placing in a private home.[66]
Importation for placing or procuring placement in any free wage, boarding home, or for purposes of adoption.[67]
Importation to place in any home.[68]
Importation to place in a family home.[69]
Importation to give his custody to some person or procuring adoption.[70]
Importation for adoption.[71]
Importation for placing or procuring his adoption.[72]
Importation to place in any family home with or without indenture or for adoption.[73]
Importation for giving custody to some person, institution, corporation, or agency in the state or procuring its adoption.[74]

Individuals Regulated

Like most regulatory statutes, the child importation statutes specify the individuals who are to be regulated. Some of the statutes attempt to be all-inclusive, reaching the broadest possible range of individuals. Typical phrasings for these laws are:

Any person, corporation, association, or institution.[75]
Any person, any public or private agency, corporation, or organization.[76]
Any person, partnership, association, corporation, charitable agency, or other entity.[77]

These all-inclusive attempts at coverage may also be phrased as a negative:

No person.[78]
No person or institution.[79]
No person, agency, association, institution, or corporation.[80]

These various phrasings all indicate legislative intent to regulate broad ranges of individuals involved in interstate

placements; it is likely, however, that they all reach similar groups of individuals. Other child importation statutes contain qualifications limiting applicability to specified categories of sending agencies. Kansas, Missouri, and Nebraska limit the application of their importation statute to "associations incorporated in another state."[81] Seemingly, unincorporated associations, unincorporated child-caring organizations, parents, or officials do not come within the coverage of these statutes.

Other specific descriptions of statutory application are "a public or private agency of any state, accredited in such state for the placement of children,"[82] and "no person or organization except Delaware authorized agencies."[83] Most of the importation statutes exclude from coverage interstate placements by relatives: relatives by blood or marriage, or relatives with specified degrees of kinship or relationship.[84] North Dakota excludes, from regulation, placements by relatives or guardians, provided the guardian is not an agency.[85] New Jersey excludes placements by relatives in their own home, but if an interstate child is subsequently re-placed, the normal import regulations apply.[86] Connecticut also excludes placements to any summer camp operating less than 90 days, and to any educational institution.[87]

Exportation

A few states have statutes regulating the exportation of children. Almost all are in conjunction with importation statutes giving both regulatory authorities to the same executive agency.

Activities Regulated

Like the importation statutes, the activities regulated are diverse and, because of the absence of case law, the exact activity reached by the export statutes may be broader than the phrasings found in the statutes. The activities regulated in the exportation statutes are:

Exportation for adoption.[88]
Exportation to place in a foster home.[89]
Exportation to place in a foster home or in a child-caring institution.[90]
Exportation for foster care placement.[91]

Individuals Regulated

Again, similar to the importation statutes, different categories of individuals are regulated or excluded from regulation by the exportation statutes. Florida requires everyone except "an agency or the department" to comply with its exportation requirements;[92] Minnesota excludes only parents and guardians from exportation regulation; Nebraska also excludes persons with a "right to dispose" of a child.[93]

The import and export statutes fill a gap in the discussion of interstate placement issues. They express legislative awareness of the problems involved in sending children across state lines. As rules of comity for court and administrative placements, they establish methods for "regularizing" such placements and assuring comparable state involvement in interstate and intrastate placements.

Based on the absence of court interpretations of these statutes, the conclusion is suggested that the import and export statutes are not extensively utilized. They also appear to be alternatives to the Interstate Compact on the Placement of Children and the Interstate Compact on Juveniles for regulating the interstate placement of children. Because of the absence of court decisions construing the application of all of these laws, it is not possible to conclude whether there is any congruence in their coverage.

CONCLUSIONS

Attempts to apply constitutional doctrines to interstate placements are a recent development. The right to treatment issue was raised in the *Gary W.* case; there, the federal court interpreted the doctrine as not encompassing a per se ban on out-of-state placements; rather, the *Gary W.* court appears to have viewed the right to treatment as a two-edged sword. The doctrine can be used to require the placement of children outside a state if appropriate treatment can only be found there, or it can be used to return children to the sending state if the out-of-state placement is inappropriate. The *Gary W.* court viewed the basis for the complaint as the needs of each individual child rather than the interstate nature of the placement.

Sinhogar, a current New York challenge to interstate placements, raises due process issues related to the right to treatment. The *Sinhogar* plaintiffs also raise two other constitutional issues. First, the plaintiffs allege that New York's

practice of placing some youth within New York state and others outside the state is per se a denial of equal protection. Second, the granting of hearings to delinquent youths but not to dependent children to determine the suitability of interstate placements is also a denial of equal protection.

Most statutory authority for court or executive agency placements of children does not mention geographic limitations. A few states have statutes expressly authorizing interstate placements by courts or executive agencies. Michigan expressly authorizes international placements. For statutes that do not mention geographic limitations on placement authority, more recent judicial decisions construe the statutes to permit interstate placements. This reverses the earlier tendency to construe ambiguous statutes as not authorizing placements anywhere but within the territorial limits of the state having jurisdiction over the child.

Several legal doctrines appear to be available to support out-of-state enforcement of an interstate placement order. Although specific case law is minimal, the doctrines of full faith and credit, comity, and long-arm jursidiction appear to give some basis to the legality and enforceability of interstate placement orders.

As to state administrative regulation of interstate placements, the majority of states have a statutory basis in their child importation and exportation laws, sometimes applied through licensing procedures. Although these statutes appear to have developed from legislative concern with informal interstate placements, several such laws are clearly applicable to official interstate placements. Because of the absence of judicial construction of these import/export statutes, it is unclear whether all are applicable to official interstate placements by courts and executive agencies.

FOOTNOTES

1. *Gary W. et al.* v. *State of Louisiana*, 437 F. Supp. 1209 (D.C., La., 1976).
2. *O'Connor* v. *Donaldson*, 422 US 563, 95 S.Ct. 2486, 45 L.Ed. 2d 396 (1975); *Rouse* v. *Cameron*, 373 F.2d 451 (D.C. App., 1966 as amended 1967); *Wyatt* v. *Stickney*, 325 F. Supp. 781 (D.C., Ala., 1971); *Wyatt* v. *Aderholt*, 503 F. 2d 1305 (5th Cir., 1974); *Martarella* v. *Kelley*, 349 F. Supp. 575 (S.D. N.Y., 1972).
3. *In re Dennis M.*, 370 NYS 2d 458 (1975); *State in the Interest of F.D.*, 351 A.2d 43, 138 N.J. Super. 383 (1975); *State ex rel. Juvenile Department of Multnomah County* v. *L.*, 546 P. 2d 153 (Ct. of App., Ore., 1976).
4. *In re Gault*, 387 US 1 (1967), p. 27.
5. *Morales* v. *Turman*, 383 F. Supp. 53 (D.C. Tex., 1974), pp. 115-118, reversed, 535 F. 2d 864 (5th Cir., 1976); per curium opinion reversing 5th Cir., 20 Cr.L. 4196.
6. *Sinnett* v. *Mountain Mission School*, 1 F.L.R. 2710, filed U.S. D.C., Western District, Va., Docket No. 75-0306 (1975); *Park* v. *Thompson*, 13 Cr. L. 2132 (D.C., Hawaii, 1973); 356 F. Supp. 789, citing with approval J. Soloman in *Capitan* v. *Cupp*, Civil No. 73-738 (D.C., Ore., Dec. 1972); and *Rebideau* v. *Stoneman*, 17 Cr. L. 2463 (D.C. Vt., 1975), 398 F. Supp. 805, p. 809 and 814.
7. R. S. Levine, "Caveat Parens: A Demystification of the Child Protection System," *University of Pittsburg Law Review*, vol. 35, no. 1 (Fall 1973), p. 1.
8. L. S. Tabakin, "Increasing the Rights of Foster Parents," *University of Pittsburgh Law Review*, vol. 36, no. 1 (Spring, 1975), p. 715; J. Evans, "C.V.C. v. Superior Court: Court Versus Adoption Agency Control of Agency Adoptions before a Petition for Adoption is Filed," *Hastings Law Journal*, vol. 26 (Sept. 1974), p. 312. But see *Smith* v. *Org. of Foster Parents*, 3 FLR 3143.
9. *Sinhogar et al.* v. *Parry et al.*, filed July 26, 1977, Supreme Court, New York County, Docket No. 14138/77.
10. Beyond the statutes considered in this section, several states have constitutional provisions that may have some effect on authority to make out-of-state placements. These state constitutional provisions usually limit "exiling" or "transportation out of state" as punishments for crimes. Whether these provisions have any application to court or executive agency interstate placements of juveniles has not been the subject of reported judicial decisions.
11. *In re Church*, 204 S.W. 2d 126 (Ct. App., Mo., 1947).
12. Michigan Attorney General Opinion, April 8, 1946, No. 0-4543.
13. *Comm. ex rel. Lembeck* v. *Lembeck*, 83 Pa. Super. 305 (1924).
14. *State in the Interest of D.F.*, 351 A. 2d 43, 138 N.J. Super. 383 (1975); *In re Dennis M.*, 370 N.Y.S. 2d 458 (1975); *State ex rel. Juvenile Department of Multnomah County* v. *L.*, 546 P. 2d 153 (Ct. of App., Ore., 1976).
15. *Reyna* v. *Dept. of Institutions, Social and Rehabilitation Services*, 546 P. 2d 622 (Sup. Ct., Okla., 1976).
16. *In re A.S.*, 232 S.E. 2d 145 (Ct. Apps., Ga., 1977).
17. Ind. Code, Sec. 31-5-2-1.
18. Ind. Code, Sec. 31-5-7-15.
19. Ind. Code, Sec. 29-1-18-8. This statute is ambiguous in whether it applies to all guardians appointed by Indiana courts or merely to "probate" guardians.
20. Idaho Code, Sec. 16-1814(3); Utah Code Ann., Sec. 78-3a-42; Wyo. Stat., Ann, Sec. 14-115.30(A) (vi).
21. Ga. Code Ann., Title 24A Chaps. 1-40; La. Rev. State. Ann., Secs. 13:1561.1 and ff.; N.D. Cent. Code, Secs. 27-20-01 through 27-20-59; Tenn. Code Ann., Secs. 27-201 through 27-281.
22. E.G. La. Rev. Stat. Ann., Sec. 13:1571.7.
23. Idaho Code, Sec. 16-1814(3); Okla. Stat., Title 10, Sec. 1116(a)(2); Nev. Rev. Stat., Sec. 62.200(1)(b).
24. N.C. Gen. Stat., Sec. 7A-286(2)(c).
25. Mo. Rev. Stat., Sec. 211.181(2)(c).
26. Ore. Rev. Stat., Sec. 419.507.
27. Neb. Rev. Stat., Sec. 83-108.04.
28. Neb. Rev. Stat., Sec. 83-175.

29. La. Rev. Stat. Ann., Sec. 15:1092.
30. Vt. Stat. Ann., Title 33, Sec. 638.
31. Alaska Stat., Sec. 47.10.230.
32. Conn. Gen. Stat. Ann., Sec. 17-420.
33. Conn. Gen. Stat. Ann., Sec. 17-32(g).
34. Mich. Stat. Ann., Sec. 25.399(54).
35. Mo. Rev. Stat., Sec. 219.086.
36. Del. Code Ann., Title 31, Sec. 352.
37. *State ex rel. Juvenile Department of Multnomah County* v. *L.*, 546 P. 2d 153, p. 159 (Ct. of App., Ore., 1976).
38. *Comm. ex rel. Lembeck* v. *Lembeck*, 83 Pa. Super. 305 (1924).
39. *Butler* v. *Butler*, 143 A. 471 (Sup. Ct., N.H., 1928), p. 473; see, also, *Watkins* v. *Brannon*, 309 So. 2d 464 (Ct. of Civ. Apps., Ala., 1974), cert. denied, Mar. 6, 1975, 309 So. 2d 468 (Sup. Ct., Ala., 1975).
40. *American Jurisprudence Second*, vol. 16, Conflict of Laws, Secs. 4-7; *Corpus Juris Secundum*, vol. 14A, Conflict of Laws, Sec. 3.
41. Brigette M. Bodenheimer, "The Uniform Child Custody Jurisdiction Act," *Family Law Quarterly*, vol 3, no. 4 (Dec. 1969), pp. 304-16. The text of the act can be found following the article.
42. Alaska Stat., 25.30.010-25.30.910; Calif. Civ. Code (West, Secs. 5150-5174; Colo. Rev. Stat. Ann., Secs. 14-13-101 thru 14-13-126; Del. Code Ann., Title 13, Secs. 1901-1925; Fla. Stat. Ann., Secs. 61.1302-61.1348; Hawaii Rev. Stat., Secs. 583-1 thru 583-26; Idaho Code, Secs. 5-1001 thru 5-1025; Ind. Code, Secs. 31-1-11.61 thru 31-1-11.6-24; Iowa Code Ann., Secs. 598A-1 thru 598A-25; Md. Ann. Code, Art. 16, Secs. 184-207; Mich. Stat. Ann., Secs. 27A.651-27A.673; Minn. Stat. Ann., Secs. 518A.01-518A.25; Mont. Rev. Code, Sec. 48-331; N.D. Cent. Code, Secs. 14-14-01 thru 14-14-26; Ohio Rev. Code, Secs. 3109.21-3109.37; Ore. Rev. Stat., Secs. 109.700-109.930; Penn. Stat. Ann., Title 11, Secs. 2301-2325; Wisc. Stat. Ann., Secs. 822.01-822.25; Wyo. Stat. Ann., Secs. 20-143 thru 20-167.
43. Wyo. Stat. Ann., Sec. 14-4-109.
44. Del. Code Ann., Title 31, Sec. 307.
45. Ore. Rev. Stat., Sec. 418.290.
46. S.D. Compiled Laws, Sec. 26-6-10.
47. *Pfortenhauer* v. *Hunter*, 536 P. 2d 923 (Sup. Ct., Okla., 1975).
48. The jurisdictional principal of the *Pfortenhauer* case has been codified for all guardianship appointments in some states, e.g., Ariz. Rev. Stat. Ann., Sec. 14-5208, and Neb. Rev. Stat., Sec. 30-2612. Both of these statutes specify that, by accepting an appointment, a guardian "submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person." A committee comment to the Nebraska statute explains the rationale for the statute:

> The "long-arm" principle behind this section is well established. It seems desirable that the court in which acceptance is filed be able to serve its process on the guardian wherever he has moved. The continuing interest of that court in the welfare of the minor is ample to justify this provision. The consent to service is real rather than fictional in the guardianship situation when the guardian acts voluntarily in filing acceptance.

49. U.S. *Constitution*, Art. 4, Sec. 1; see, generally, *American Jurisprudence Second*, vol. 16, Constitutional Law, Secs. 585-591.
50. For discussions of modifiable decrees, final judgments, and full faith and credit, see, *Restatement (Second) of Conflict of Laws*, Sec. 109 (1941); *Restatement of Judgments*, Sec. 41, comment a (1942); and tentative drafts, *Restatement (Second) of Judgments*, Sec. 41, comments a, c, d, and f (1973).
51. S. F. Katz, *Where Parents Fail* (Boston, Mass.: Beacon Press, 1971).
52. L. S. Tabakian, "Increasing the Rights of Foster Parents," *University of Pittsburgh Law Review*, vol. 36, no. 3 (Spring 1975), pp. 715-27. Recent cases involving foster parents include: *Bennett* v. *Jeffreys*, 356 N.E. 2d 277, 3 FLR 3009 (Ct. Apps., N.Y., 1976); *Ross* v. *Hoffman*, 372 A.2d 582, 3 FLR 2434 (Ct. Apps., Md., 1977); but see *Smith* v. *Org. of Foster Families*, 97 S.C. Rptr. 2094, 3 FLR 3143 (1977). For other recent cases, see note at 3 FLR 1122.
53. "Long-Arm Jurisdiction in Alimony and Child Custody Cases," Note, *Columbia Law Review*, vol. 73, no. 2 (Feb., 1973), pp. 289-317; "State Court Jurisdiction: The Long-Arm Reaches Domestic Relations Cases," Cal L. Raup, *Texas Tech Law Review*, vol. 6, no. 3 (Spring 1975), pp. 1021-1054. For current cases on the long-arm statutes in the family law area see 3 FLR 1151.
54. Okla Stat. Ann., Title 12, Sec. 1701.02.
55. Ga. Code Ann., Sec. 99-211(b)(3); Wisc. Stat. Ann., Sec. 48.98.
56. Ala. Code, Sec. 38-7-15.
57. Ibid.
58. South Carolina Attorney General Opinion, 1970-71, No. 3217, p. 200.
59. Conn. Gen. Stat. Ann., Sec. 17-51.
60. Ill. Rev. Stat., Title 23, Sec. 2226(a).
61. Ala. Code, Sec. 38-7-15.
62. Mass. Gen. Laws Ann., Ch. 119, Sec. 36.
63. S.C. Code Ann., Sec. 71-207.
64. Wyo. Stat. Ann., Sec. 14-4-108; N.D. Cent. Code, Sec. 40-12-14.1.
65. Mo. Rev. Stat., Sec. 210.010.
66. W. Va. Code Ann., Sec. 49-2-15.
67. Del. Code Ann., Title 31, Sec. 307.
68. N.J. Rev. Stat., Sec. 9:7-1.
69. Ore. Rev. Stat., Sec. 418.290.
70. N.C. Gen. Stat., Sec. 110-50.
71. R.I. Gen. Laws Ann., Sec. 14-7-3; Del. Code Ann., Title 13, Sec. 926.
72. Ga. Code Ann., Sec. 99-215; Minn. Stat. Ann., Sec. 257.05; R.I. Gen. Laws Ann., Sec. 40-12-5.
73. Kan. Stat. Ann. ,Sec. 38-315; Ky. Rev. Stat. Ann., Sec. 199.350; Neb. Rev. Stat., Sec. 43-704.
74. Tenn. Code, Sec. 14-1505.

75. Ind. Code, Sec. 12-3-21-1.
76. N.H. Rev. Stat. Ann., Sec. 170-B:23.
77. N.D. Cent. Code, Sec. 40-12-14.1.
78. Wisc. Stat. Ann., Sec. 48.98.
79. Mass. Gen. Laws. Ann., Ch. 119, Sec. 36.
80. Tenn Code Ann., Sec. 14-1505.
81. Kan. Stat. Ann., Sec. 38-315; Mo. Rev. Stat., Sec. 210.010; Neb. Rev. Stat., Sec. 43-704.
83. N.J. Rev. Stat., Sec. 9:7-1.
83. Del. Code Ann., Title 13, Sec. 926.
84. E.g., Ind. Code, Sec. 12-3-21-5 ("relatives"); Mass. Gen. Laws Ann., Ch. 119, Sec. 36 ("blood or marriage"); Minn. Stat. Ann., Sec. 257.05(2) ("specified relatives").
85. N.D. Cent. Code, Sec. 40-12-14.1.
86. N.J. Rev. Stat., Sec. 9:7-4.
87. Conn. Gen. Stat. Ann., Sec. 17-51(2).
88. Fla. Stat. Ann., Sec. 63.207.
89. Minn. Stat. Ann., Sec. 257.06.
90. N.C. Gen. Stat., Sec. 110.52; Tenn. Code Ann., Sec. 14-1508.
91. Va. Code Ann., Sec. 63.1-207.1.
92. Fla. Stat. Ann., Sec. 63.207.
93. Minn. Stat. Ann., Sec. 257.06; Neb. Rev. Stat., 43-215.

4. Interstate Compacts

At present, all states belong to a number of interstate compacts, ranging from a high of 40 in New York to 12 in Hawaii. In each instance, the signatory states seek the mutually binding cooperation of other states in order to reduce interstate boundary conflicts, improve client services, reduce state costs, or increase state revenues.[1]

There are three interstate compacts that pertain to the interstate placement of children: the Interstate Compact on Juveniles (Juvenile Compact); the Interstate Compact on the Placement of Children (Placement Compact); and the Interstate Compact on Mental Health (Mental Health Compact). Currently, the Juvenile Compact includes all 50 states and the District of Columbia. Forty-three states belong to the Placement Compact and 45 belong to the Mental Health Compact.[2]

COMPACTS, AGREEMENTS, AND UNIFORM LAWS

Interstate cooperation may be obtained through three types of reciprocal instruments: compacts, agreements, and laws. Of the three, only the interstate compact creates a relationship mutually adopted by state legislatures and sanctioned by constitutional law.

Interstate compacts require the legislative adoption of model statutes that have, in effect, been agreed upon by the states in advance of passage. The legislatures usually must adopt the verbatim compact language presented to them or simply refuse to participate. Some variations are permitted, however, in limited ways. For example, states may, if they wish, adopt or reject earmarked sections of subsequent amendments without affecting their compact memberships. In addition, enabling legislation, which creates the administrative machinery for carrying out the compacts' intent, may vary in accordance with state procedures. In some states, statutory definitions may vary, such as the age limits of juveniles or the variations between misdemeanors and felonies. These differences must be resolved through procedures designed to implement compact intent. The process of legislative sanction and oversight is at times a slow and laborious one, but once a compact has obtained the necessary legislative endorsement, the possibility of a misunderstanding between the states is most remote.

There is a wealth of case law sustaining compact compliance, as well as a long history of successful compact adoption and implementation. Compacts have withstood numerous challenges and, although the full potential of interstate cooperation has yet to be reached, there is ample evidence to support the prediction of continued growth and application of the compact concept.

Interstate agreements, on the other hand, need not have full legislative support but may be entered into by state agencies or by executive order. Sometimes a legislature has delegated to the executive branch authority to enter into interstate agreements in such specific areas as motor vehicle registration, environmental protection, or highway markings. The agreement may have all the attributes of a compact, such as language and enforcement commonalities, but does not have the sanction that comes with legislative adoption.

Although frequently more expedient, there are several disadvantages to this type of agreement. There are no assurances that the common contractual elements will be subject to identical interpretation; neither are there statutory guarantees that conflicting state statutes will be superseded. Agreements created without legislative sanctions also run the risk of being compromised by the judgments of the administrators who signed them or their successors. While a compact enjoys statutory permanency, an agreement may last only through a single administration or be subjected to changes in the priorities of the state agencies involved. Yet, the history of interstate agreements is quite stable and more and more interstate cooperative efforts are accomplished through the agreement process.

Uniform laws present another means of obtaining interstate cooperation but, like interstate agreements, possess significant weaknesses in permanency and enforcement. The National Conference of Commissioners on Uniform State Laws meets annually to draft laws which are uniform in nature and mutually beneficial to those states which obtain adoptions. The uniform laws, however, are only suggested models and do not require absolute similarity in adoption. State legislatures are free to amend the recommended provisions according to their perceptions of state needs and the constraints of existing state legislation. A uniform law that is subjected to this process soon loses its uniformity. A

compact, unlike a uniform law, is adopted in its entirety and its basic provisions cannot be altered by participating legislatures. The uniform laws and interstate agreements do benefit from the "full faith and credit" guaranteed state statutes by the U.S. Constitution. Specific models for interstate cooperative laws have been established by the Uniform Law Commissioners and overall interstate cooperation has been successfully practiced.

COMPACT CONSTRUCTION

There is a series of basic elements that most compacts contain. These elements are usually translated into compact articles that collectively constitute the compact's subject matter: (1) a purpose or rationale for compact adoption; (2) procedures, obligations, and commitments required of the participating jurisdictions; (3) fiscal and organizational requirements for compact operations; (4) exceptions of law and operations required within the compact; (5) a severability clause, which enables participating jurisdictions to identify specific areas of non-participation without voiding the entire compact; (6) time and notification requirements for compact entry and withdrawal; and (7) an amendment procedure.

Generally, a specific enabling legislative model is also presented. The reason, of course, for such specificity is to assure that each jursidiction adopting the compact does so uniformly to avoid any default because of language alteration. For example, New Hampshire adopted the juvenile compact, but its legislature failed to utilize the proper compact model. This lack of compatibility of language and intent with all other member jurisdictions necessitated the withdrawal of the first New Hampshire statute and the subsequent adoption of the verbatim compact language. This requirement of commonality of language, especially in substantive areas of compact construction, reinforces a close correlation between compacts and the law of contracts when subsequent judicial interpretation is required.

Most reciprocal service delivery compacts do not require a common agency or individual administrator within the participating states. They do require that a compact administrator be appointed. Normally, national associations of administrators automatically evolve for the purpose of resolving issues concerning compact operations. In some compact organizations, a secretariat is designated, such as the Council of State Governments, the American Public Welfare Association, the American Association of Motor Vehicle Administrators, or other similar national organizations. In other compacts, the administrators' association provides its own secretariat services internally. Federal agencies, such as the Department of Health, Education, and Welfare, the Law Enforcement Assistance Administration, and the Department of Transportation have, from time to time, provided funds for secretariat services to support the mechanisms through which the compacts are maintained and updated.

A number of participating states have established governing boards, agencies, and authorities for the purpose of carrying out the business of the compacts involved. These agencies are empowered, in many instances, with bonding, taxing, and regulatory authorities that supersede general state statutes granting such powers. The New York Port Authority Compact of 1921 is a case in point. The Port Authority Compact provides New York and New Jersey with a cooperative agency that could accomplish joint planning, administration, and acquisition that was beyond the jurisdictional authority of the individual state governments. The Port Authority now owns and operates airports, tunnels, and bridges, and has withstood the challenge of both state court systems as to its capacity to tax, bond, and own property, independent of both New Jersey and New York State governments. Control of the Port Authority and other like agencies still lies within the state legislatures that created them, although legislatures do vary in the extent to which they exercise their oversight responsibilities.

Two excellent discussions on the phenomenon of interstate compacts may be found in *The Interstate Compact since 1925* and *The Law and Use of Interstate Compacts*.[3] The compacts, according to the authors, provide a "moral force" for interstate cooperation which favorably affects all citizens and government services in participating jurisdictions. There are also authors who view the compact concept with suspicion and charge that citizen, executive, and legislative prerogatives may be usurped by compact administrators. Marian Ridgeway, in *Interstate Compacts: A Question of Federalism*, is one who questions a blanket compact endorsement.[4]

CONSTITUTIONAL BASIS FOR COMPACTS

Three major litigations have transpired which firmly entrench the interstate compact as an effective means of obtaining state cooperation for mutual citizen benefits or for resolution of interstate conflicts. In each of the three landmark decisions listed below, the U.S. Supreme Court reaffirmed the constitutionality of interstate compacts and provided guidelines for continuing interstate cooperation.[5]

In *Virginia* v. *Tennessee*, the two states informally drew up a contract which established their mutual border.[6] In a

subsequent interstate compact, the two states formalized their initial agreement and did so without an official congressional act of approval. Congress claimed that it should approve the compact on the basis of Article 1, Section 10, of the U.S. Constitution. The Supreme Court ruled otherwise, declaring that congressional approval was "tacitly" given to the Virginia-Tennessee Compact when Congress utilized the border established by the compact as a basis for defining federal judicial districts. More to the point, perhaps, was the Court's test for determining when congressional approval was needed. It held that, even though Congress had "tacitly" agreed or implied its consent to the boundary compact, it was not really necessary so long as the "political balance" of the Union was not disturbed. The Court's opinion helped provide constitutional legitimacy for future compacts.

In the decision of *State ex rel. Dyer* v. *Sims*, the Court utilized the theory of contracts as an analogue to compact adoption.[7] That is to say, an offer is initiated by two or more states of eligible joinder to legislatively adopt a given compact written in the same or comparable language. Acceptance of the contract (compact) is executed by binding legislative acts of the participating jurisdictions which must agree to all provisions affected and, in particular, must obtain necessary legislation to withdraw or amend. Although contract law is maintained in all compacts, so is the option of severability. In cases where the severability clause is enacted, only those elements adopted are considered enforceable by other states.

Virginia v. *West Virginia* evolved out of an altercation concerning the partial assumption of Virginia's accumulated debt by West Virginia as a condition of independence.[8] The major issue was enforcement of compact precepts upon states of joinder by the U.S. Supreme Court. West Virginia had been reluctant to repay that portion of Virginia's debt assumed by compact agreement prior to its acquisition of statehood. Virginia claimed, and was upheld by the U.S. Supreme Court, that not only should the debt be paid by West Virginia as a compact obligation, but also that the Supreme Court was empowered to enforce the compact provisions. Since then, issues of compact maintenance have been relatively nonexistent. Not only does the U.S. Supreme Court resolve multistate jurisdictional disputes, but compact elements are considered superior to conflicting laws of joinder states and are enforceable by the U.S. Supreme Court.

INTERSTATE COMPACT ON JUVENILES

The Interstate Compact on Juveniles (Juvenile Compact) was patterned after the Interstate Compact for the Supervision of Parolees and Probationers (Parole and Probation Compact), which was initiated following the Crime Control Consent Act of 1934.[9] Until the Crime Control Consent Act of 1934, adult and juvenile parolees and probationers were restricted to in-state travel, unless "sun-down parole" or a "gentleman's agreement" for supervision could be reached between two state paroling authorities. In 1937, 25 states signed the Parole and Probation Compact and, by 1951, all states were members.

It soon became evident that the Parole and Probation Compact did not adequately meet the special needs of juveniles requiring interstate supervision. Recognizing the advisability for an interstate compact to provide for special juvenile circumstances, the Probation and Parole Compact Administrators Association, the National Council of Juvenile Court Judges, the National Association of Attorneys General, and a number of other concerned organizations cooperated with the Council of State Governments in drafting the Juvenile Compact. In January 1955, the compact was completed and all the states, plus the District of Columbia, Puerto Rico, and Guam are members. Although Congress had provided consent for the Parole and Probation Compact through the Crime Control Consent Act of 1934, the Senate Judiciary Committee determined that congressional consent was unnecessary for the Juvenile Compact.[10] The committee's reasoning was based upon the *Virginia* v. *Tennessee* "political balance" theory which determined that, so long as the federal system was not disturbed by the compact, congressional consent for joinder was unnecessary.

The authors of the 1955 Juvenile Compact took cognizance of state-to-state variations in guardianship responsibility, differences in procedural and supervisory practices, definitional differences, minority age limits, and a number of other issues pertaining specifically to juveniles. Three optional amendments were added to the original compact to provide for the return of runaways, for out-of-state confinement, and for rendition in third-party states.[11] These were only to take effect in participating jurisdictions. To date, 19 states have adopted the runaway amendment, 12 states have adopted the amendment on confinement, and 22 states have adopted the amendment on rendition. Together with these amendments, the Juvenile Compact has the following stated purposes:

1. To provide for the return of juvenile absconders and escapees to the state from which they absconded or escaped.

2. To provide for the return of runaways to their home states.

3. To permit out-of-state supervision of delinquent juveniles who should be sent to some state other than the state of jurisdiction and who are eligible for probation or parole.

4. To authorize agreements for the institutionalization of special types of juveniles, such as psychotics and defective delinquents outside the state of original jurisdiction.

The compact's four principal functions of (a) return of absconders and escapees, (b) return of runaways, (c) supervision of parolees and probationers, and (d) out-of-state confinement require separate procedures for both the sending and receiving state. Amendments to the compact are adopted from time to time by the Association of Juvenile Compact Administrators and are recommended to the states for adoption.[12]

Return of Absconders and Escapees. When a juvenile escapes from an institution or absconds from parole or probation supervision, the appropriate individual possessing authority over that youth forwards to the appropriate court or executive official in the jurisdiction where the delinquent juvenile is alleged to be located, a requisition for his return to the home court of jurisdiction. The compact procedure not only includes informing the local court but also provides access to the state's juvenile services network in the apprehension and return.

The compact's construction enables the asylum state (where an absconder or escapee is located) to return the delinquent, after a hearing to verify the facts. The apprehended escapee or absconder is taken to juvenile court where the judge is only required to determine that the requisition received from a demanding state is in order and that the juvenile in custody is the person being requested. The agency in the demanding state is then informed and agreement is reached as to the means of transporting the juvenile back to the demanding state.

The return procedures utilized in the compact, while providing due process safeguards, are not as stringent as adult extradition proceedings which require extensive court involvement and a chief executive's concurrence. The compact's returns are far less structured in that only a requisition's authenticity and the juvenile's identity are determined by the asylum state's court.

Return of Runaways. The compact procedures for the return of nondelinquent runaways, which are currently being reviewed in light of changes in juvenile court treatment of status offenders, are similar to those described above. Uniform procedures are designed to assure correct execution of the compact precepts and to also assure emancipated minors are not returned through the compact as runaways.

When a nondelinquent juvenile runaway objects to being returned home, the parents or guardians are informed. They must then petition the home juvenile court for a requisition to require the runaway's return. If approved, the home court then forwards the requisition to either the specific court where the juvenile is being held or to the executive authority of the state where the juvenile is assumed to be in residence. The juvenile court or state agency in the asylum state receiving the requisition issues an order to take the juvenile into custody, if he is not already being detained. Once the judge determines that the requisition is in order and the juvenile is the correct individual so identified, the juvenile is then turned over to the appropriate officer of the demanding state to be escorted home.

When a court has in its custody a nondelinquent runaway and has notified the home court of that juvenile's status but has not received the necessary return requisition, that court may hold the juvenile for up to 90 days so that a return may be arranged. If the juvenile's parents do not take the necessary action to obtain the runaway's return, the home court will be requested by the compact administrators to make appropriate and necessary custody arrangements in the home jurisdiction. The home court then has 90 days to either take custody of the juvenile or obtain other suitable custody, or the home state becomes responsible for the return of the juvenile. In practice, compact administrators cooperate to assure the juvenile's return or obtain a release for the juvenile in the asylum state if the 90-day time limit has expired.

Supervision of Parolees and Probationers. The compact's Articles II and VII provide for the supervision of parolees and probationers. At the same time, Article XV of the Juvenile Compact declares that the compact provisions are severable if they are "declared to be contrary to . . . the applicability thereof to any government, agency, person or circumstances." Since the Uniform Juvenile Court Act, adopted by many states, permits juvenile courts to make out-of-state placements, local courts might hold the state's compact provisions to be inapplicable. There is, therefore, an option left open to states to allow local courts to make their own placement arrangements, which would not have the protections offered juveniles through the compact.

Compact procedures call for preplacement investigation, regular monitoring of the placement, and the extension of the full protections offered juveniles under the laws of a receiving state. The extension of protection is of special value to juveniles who are in placement situations that are not adequate or are counterproductive. In cases where

inappropriate placements are made under the aegis of the compact, there are procedures available to either change placements or place such juveniles under the protection of the local court in the same manner as if the juveniles in question were residents. The compact, in essence, extends all the protections and services of both states to juveniles receiving parole or probation supervision in a receiving state.

Sometimes administrative revocation hearings are held, with compact administrators or case supervisors serving as the authorized representatives of the sending states. If the decision is reached to revoke parole or probation, the receiving state initiates a return procedure similar to that utilized for the return of runaways, absconders, and escapees. The sending state then exercises the option to either have the delinquent returned or makes arrangements through the compact for confinement in the receiving state. Each compact state has institutions designated as appropriate for compact cases and an involved procedure is required for their use.

Out-of-State Confinement. The Juvenile Compact is particularly specific in its treatment of out-of-state confinement. There are three possible methods of confinement. In the first example, a child on parole or probation has been placed in a receiving state under the Juvenile Compact. Upon commission of a new offense, the child is treated as if he were a resident, rather than seeking his return through the compact. In such cases, where ordered, the child would be confined outside his state of residence, even though he was not sent out of state for that purpose.

A second possibility occurs when to signator states mutually agree that the receiving state's facilities are better suited to a particular child's needs and a contract is signed providing for placement and payment. Under Article X, the child must have been adjudicated delinquent and a hearing must be held regarding the transfer.

A third method of effecting an interstate institutional confinement under the Juvenile Compact is through the adoption of the optional Out-of-State Confinement Amendment. This amendment has only been adopted by 12 states. Its applicability is limited to escapees, absconders, and to compact-supervised parolees or probationers when the sending state determines that confinement in the receiving state would be preferable to return. Other limitations in the Out-of-State Confinement Amendment require each state to designate a "Compact Institution"; provide approval prior to any change in location or status for those confined; require use of special billing and repayment procedures; and require other restrictions which have tended to minimize state interest in its adoption.

Procedures for placing a juvenile delinquent in out-of-state confinement, either under the basic compact or the Out-of-State Confinement Amendment, are primarily the same. A sending state compact administrator makes a request for placement utilizing the proper forms and the supporting case history documents. The receiving state administrator then makes the necessary arrangements with the institution and follows through with cooperative arrangements for delivery of the individual to be confined. The receiving state is obligated to provide a treatment environment comparable to that provided its own residents in the institutions and to provide regular reports to the sending state as to the status of the juvenile.

Although the treatment decisions are to be made at the institutional level, the sending state still maintains ultimate jurisdiction over the juvenile in placement and may at any time request release or placement changes.

It is important to note that out-of-state confinement under the auspices of the Juvenile Compact and the Out-of-State Confinement Amendment are constrained by states' definitions of "juvenile delinquent." In many states, this definition is restricted to criminal-type acts; in others, it will include status offenses or violations of previous court orders, or both. It is not only conceivable, but probable, that a sending state might seek to place a juvenile in a state for an act which, in the receiving state, would not be defined as an act of delinquency.

The data available from the Juvenile Compact administrators' report of 1976 on compact transfers reflects minimal institutional placements under this Amendment. Only 142 placements were reported by sending states. South Dakota, which places all its female commitments in institutions in other states, made the greatest use of the amendment with 42.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The Interstate Compact on the Placement of Children (Placement Compact) was written in the early 1950s as a complementary document to the Juvenile Compact.[13] Its intent was to provide an interstate placement mechanism and supervision for children through adoptions, foster care, and institutionalization. The American Public Welfare Association (APWA), which serves as the compact secretariat, predicts full 50 state and territorial adoption in the next few years. The prediction seems well founded, given the general consistency of attitudes in the states regarding foster care and adoptions. The major portion of Placement Compact activity is related to either adoptions or foster home placement; however, its use for effective and protective interstate placement of children in institutions (about 5 percent

of compact activity) is of primary interest to this study. At present, the Placement Compact has 43 member states: 16 have joined in the last two years.

The Placement Compact, like its predecessor compacts, is based upon the U.S. Constitution, Article I, Section 10, and *Virginia* v. *Tennessee*, *Dyer* v. *Sims*, and *West Virginia* v. *Virginia* decisions. The Constitution's Article IV, Section 1 (full faith and credit clause), is also offered as a rationale for developing the compact. The reasoning offered is that, although the Constitution requires that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state," this does not require each state to enforce the laws of the other states.[13]

The drafters of the Placement Compact articulated specific policies governing compact implementation. The compact states that each child requiring placement will receive maximum opportunity to be placed in a suitable environment and with persons and institutions with appropriate qualifications, facilities, and commitment to care. The child is to be protected by having the proper authorities in the state of residence determine the level of care available in a potential placement in the receiving state. The authorities in the receiving state have the responsibility of evaluating the projected placement, and appropriate jurisdictional arrangements affecting the care of the child are to be promoted.

The Placement Compact creates a service network in the same manner as the Juvenile Compact. A compact administrator is appointed in each state who has responsibility for compact enforcement. All placements, pre-placement investigations, monitoring, terminations, returns, and all other required state activities for compact compliance are channeled through the administrators's office.

The procedures outlined for placement are circumscribed by the laws and practices in both the sending and receiving states, even though compact requirements do supersede conflicting state laws. The sending state does maintain legal jurisdiction over the placement and has a financial responsibility to pay for all costs accrued to the receiving state. Compact practice usually provides for reciprocal payments for state agency costs, but direct payment may be required for foster care, medical and dental payments, school tuition, per diem, and treatment charges in private institutions.

As mentioned earlier, interstate adoptions and foster care placements are the major uses of the Placement Compact, but institutional placements are of particular importance for juvenile cases requiring specialized care. The Placement Compact's language provides for "institutional placement in a state," as opposed to the Juvenile Compact which provides for "institutionalization of a juvenile in a state institution."

Through the Placement Compact, unlike the Juvenile Compact, adjudicated delinquents may be placed in out-of-state public or "private" institutions. The Placement Compact, with its institutionalization article (VI) and accompanying procedures, requires a hearing in the sending state prior to institutionalization. The parent, guardian, and counsel are required to be heard in the hearing prior to the out-of-state institutionalization of an adjudicated delinquent. The judge, however, may rule that the parent has no right to disagree with the disposition because of the delinquency status of the juvenile. The Placement Compact also enables a court to make direct placements to private, out-of-state agencies while still maintaining compact jurisdiction for the sending state.

The major requirement for an institutional placement under the compact is that it must be in the best treatment interest of the child, as determined by the local court or sending state agency.

An unfortunate limitation of the compact is that it does allow direct court placement out-of-state in a private institution without a mandatory pre-placement decision by the compact administrator of the receiving state. This potential flaw in compact practice may tend to encourage out-of-state institutional placements in private institutions that do not have adequate treatment programs or facilities. Compact administrators make themselves aware of treatment and care variations, and share their knowledge when institutional placement decisions are being made, but their ability to contribute is obviously compromised when the compact is bypassed. The main justifications offered by local senders when the compact is avoided are either based upon beliefs that the process is too time-consuming, or that the state contributes no funds to the placements and, therefore, should have nothing to say about them.

INTERSTATE COMPACT ON MENTAL HEALTH

The Interstate Compact on Mental Health (Mental Health Compact) currently has 45 member jurisdictions.[15] Its purpose is to assure appropriate care and treatment of mentally ill and mentally deficient patients who are moved from one state's institutions to another state's institutions. The Mental Health Compact, similar in structure to the Juvenile Compact, is limited to placement in public as opposed to private facilities.

Changes in the patient's family place of residence are the major reasons for the use of the compact. To date, the transfers have been primarily institutional; however, no provision in the compact would limit its use for out-patient

services, so long as they were limited to public treatment facilities.

The compact has a further purpose to enable temporary placements of escapees who have been apprehended in foreign jurisdictions. These temporary placements, as well as all other transfer procedures, require the resident state to assume all costs for transportation, custody, and treatment services.

The major problems in compact operation are related to either those inherent in the compact provisions or in the structure and practices of state compact administration. If, for example, state licensure agencies are lax in the enforcement of compact provisions, there may be no other state agency that can control what patients receive when placed out of state. In addition, long delays are frequently experienced, at times one and two years.

COMPACT PROCEDURES FOR INTERSTATE PLACEMENTS

Procedures utilized for transferring a child under all three compacts are quite similar. A court or social agency determines that a child, over which it has jurisdiction or custody, needs some type of assistance. For whatever reason, a decision is made that the child should be placed in another state. In some cases, a specific institution is selected and contacted to determine the child's acceptability. In other cases, the child's particular service needs are clearly understood, but no facility is identified by the sending agency, either because many facilities could be utilized appropriately or because the child's needs are so unusual that no facility known to the sending agency would seem to satisfy them. In either event, the interstate compact administrator is contacted.

The cognizant compact administrator will contact the counterpart administrator in another state or in several other states, depending upon whether a specific facility has been identified for the child's placement. The correspondence will typically include a request for assistance; information about the types of services being sought; copies of the child's records, including medical and social histories; and some indication about the maximum per diem allowable, as well as identification of the financially responsible party.

Upon accepting the placement request, the receiving state compact administrator will forward the information about the child either to the identified facility or to several facilities that generally meet the programmatic and per diem criteria established by the sending state administrator. The channels for communication have now been fully established. Once the facility indicates its willingness to accept or reject the child, its response is delivered to the court or social agency in the sending state through the two compact offices.

At this point, assuming at least one affirmative response, the sending agency may either begin or continue direct contact with the selected facility, or indicate through the compact offices its willingness to place the child. Assumed in this scenario is the proper licensing or accreditation of the receiving facility, which is recognized by both compact administrators. In some cases, a pre-placement investigation is undertaken by the receiving state compact administrator in order to assure the sending state administrator and sending agency of the caliber of services provided. It is also possible that both sending and receiving state compact administrators will actually participate in transporting the child to and from the airport or, in other similar ways, become personally involved in assuring a smooth transfer between the sender and the receiving facility.

Depending upon requests made of them, compact administrators will remain only sporadically involved in the case, usually to periodically monitor the placement and to forward facility progress reports, or to intervene in cases where complaints are made about services or payments. If requested to do so, compact administrators will also help to effect the child's return, after the placement has been terminated.

In comparing their applicability to different kinds of children, senders, and receivers, it is clear that, both individually and collectively, the three compacts do not relate to many cases of interstate placement. As shown in Table 1, although there is very little overlap between the compacts, there are a number of categories of children for whom compact procedures are meaningless. Particularly significant to this project are the placements of children in boarding schools and private psychiatric facilities, whose transfers are not subject to the procedures of any compact.

Table 2 shows two other ways in which the fundamental question of compact applicability might be determined.

While the Placement Compact covers most potential senders, it does not apply to cases where members of the child's family place the child in another state by virtue of a specific exemption in Article VIII. The Juvenile Compact relates primarily to the placement of delinquent children which would, by definition, eliminate many children's services agency placements, as well as those made by family members. The Mental Health Compact is used almost exclusively by the state department responsible for operating mental health and mental retardation institutions.

In terms of receivers, all medical facilities except public psychiatric hospitals may accept out-of-state adolescent patients without the benefit of compact intervention. Similarly, boarding schools are not covered by any compact,

Table 1
APPLICABILITY OF CHILDREN'S COMPACTS, BY CATEGORY OF CHILD

Child category	*Placement Compact*	*Juvenile Compact*	*Mental Health Compact*
Abused	*	N/A	N/A
Adoptive	*	N/A	N/A
Delinquent	*	*	N/A
Dependent	*	N/A	N/A
Developmentally disabled	N/A	N/A	N/A
Emotionally disturbed	N/A	N/A	*(a)
In need of education	N/A	N/A	N/A
Mentally ill	N/A	N/A	*(a)
Mentally retarded	N/A	N/A	*(a)
Neglected	*	N/A	N/A
Physically handicapped	N/A	N/A	N/A
Status offender	*	*(b)	N/A

N/A—Not applicable.
(a) If placed in a public mental institution.
(b) If state definition of delinquency includes status offenses or if the return of a runaway is involved.

Table 2
APPLICABILITY OF CHILDREN'S COMPACTS, BY TYPES OF SENDERS AND RECEIVERS

Types of senders and receivers	*Placement Compact*	*Juvenile Compact*	*Mental Health Compact*
Senders			
State agencies	Yes	Yes	Yes
Local public agencies	Yes	Yes	No
Private agencies	Yes	No	No
Independent placers (parents, guardians, close relatives)	No	No	No
Receivers			
Psychiatric hospitals			
Public	No	No(a)	Yes
Private	No	No(a)	No
Boarding schools	No	No(a)	No
Medical hospitals	No	No(a)	No
Other public facilities	Yes	Yes	No
Other private facilities	Yes	No(a)	No
Relative homes	Yes	Yes	No
Foster homes	Yes	Yes	No

(a) Sometimes applied to placement of juveniles on probation and parole.

despite extremely high enrollments from all parts of the world. As intended, the Placement Compact covers placements in both public and private residential facilities and in all forms of foster care, with one exception. A child's parents or guardian may send a child to live with a close relative without using the compact. However, the same placement, made by a court or social agency, would have to go through either the Placement or Juvenile Compact office. This is particularly significant in the latter type of cases when relatives (other than parents) cannot afford to maintain the child in their home without financial assistance. Compact coverage frequently enables public agencies to treat such placements as other foster care cases.

FOOTNOTES

1. *Interstate Compacts, 1783-1977: A Revised Compilation* (Lexington, Ky.: The Council of State Governments, 1977). See, also, Martha Bell Conway, *The Compacts of Virginia* (Richmond, Va.: State of Virginia, 1963); Richard H. Leach and Redding S. Sugg, Jr., *The Administration of Interstate Compacts* (Baton Route, La.: Louisiana State University Press, 1959).

2. The verbatim texts of all three compacts appear in Appendix A. A listing of current memberships in each of the compacts appears in Appendix B.

3. Frederick L. Zimmermann and Mitchell Wendell, *The Interstate Compact since 1925*, and *The Law and Use of Interstate Compacts* (Lexington, Ky.: The Council of State Governments, 1950 and 1976, respectively).

4. Marian E. Ridgeway, *Interstate Compacts* (Carbondale, Ill.: Southern Illinois University Press, 1971).

5. See, U.S. Constitution, Article I, Section 10: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power."

6. *Virginia* v. *Tennessee*, 145 U.S. 503 (1893).

7. *State ex rel. Dyer* v. *Sims*, 341 U.S. 22 (1955).

8. *Virginia* v. *West Virginia*, 246 U.S. 565 (1918).

9. Crime Control Consent Act of 1934, Title 4, U.S.C. 111.

10. For a discussion surrounding S.R. 130, 85th Congress, First Session, 1957, see *The Handbook on Interstate Crime Control* (Lexington, Ky.: The Council of State Governments, 1966), p. 53.

11. See Appendix A.

12. From the inception of the compact until 1976, the Council of State Governments served as secretariat to the Association of Juvenile Compact Administrators. Sam Houston State University, Center for Crime and Delinquency, Huntsville, Texas, is the current secretariat.

13. See, generally, Brendan Callanan and Mitchell Wendell, "The Interstate Compact on the Placement of Children," *Juvenile Justice*, vol. 26, no. 2 (May 1975), pp. 41-46. The authors are employed by the American Public Welfare Association, which serves as compact secretariat.

5. Case Study Digest

A digest of each case study appears below. By necessity, the justification and documentation for many statements could not be incorporated into the digests and still meet the intent of offering a condensation of the larger document. For those readers for whom the digests are insufficient, the complete versions are in Appendix C.

ILLINOIS CASE STUDY DIGEST

Over 11 million persons resided in Illinois during 1975, making it the fifth most populous state in the country. All of the five SMSAs in the state, including several principal cities, are situated near state boundaries. The contiguous states include Iowa, Indiana, Kentucky, Michigan, Missouri, and Wisconsin. The state recently ranked 40th in its incarceration rate of juvenile delinquents in state and local institutions.

Law of the State

Since 1974, Illinois has been a member of the interstate compacts on juveniles, placement of children, and mental health. The 1973 Illinois Unified Code of Corrections and the 1970 Juvenile Court Act establish the current jurisdiction, responsibilities, and organizational structure for juvenile justice. The judiciary, which is usually responsible for juvenile detention and probation, is organized on a circuit basis.

As stipulated in the statutes, most Illinois child-care facilities are regulated by state licensure through the Department of Children and Family Services (DCFS). Licensing standards consist of minimum criteria for staff, facility, and program characteristics. The law provides for a special license which entitles a facility to place children in other residential facilities it approves.

Other legislation establishes state appropriations for Private Tuition Reimbursement Funds and Individual Care Grants. These grant programs, which are administered by the Illinois Office of Education (IOE) and the Department of Mental Health and Developmental Disabilities (DMHDD), respectively, provide funds to purchase private educational or mental health services. Placements under either grant are initiated locally.

Organization of Youth Services

Since 1970, juvenile corrections has been consolidated with adult corrections in a single state department. The Department of Corrections, Juvenile Division, operates nine state institutions. However, many services for juvenile delinquents are community-based and administered through four regional offices. Detention and probation are operated by local governments. The state has the distinction of having the country's oldest juvenile court in Cook County.

Child welfare services are the responsibility of DCFS. This department serves about 50,000 children a year, including dependent, neglected, and abused children; minors in need of supervision; and delinquents under 13 years old. The eight regional offices provide community-based services through an extensive network of private vendors. For example, DCFS contracts with about 5,300 foster homes and 100 child-placing agencies. The broad responsibilities of DCFS include responsibility for licensing most child-care facilities in the state.

In addition to administering Private Tuition Reimbursement Funds, IOE registers all nonpublic facilities that are eligible for accepting children placed under those grants. Review of its *Directory* revealed an extensive list of approved facilities, and several were not located in Illinois.

The Department of Mental Health and Developmental Disabilities provides mental health, developmental disability, and alcoholism services through 28 state-operated facilities and seven regional offices. A major portion of services purchased from private agencies are funded by Individual Care Grants. These grants, which are usually initiated by a patient's family, are primarily provided to mentally regarded or developmentally disabled children. However, some emotionally disturbed children receive a few.

The Department of Public Health is responsible for licensing private psychiatric hospitals. No other responsibilities of the agency were immediately relevant to the study.

Sending and Receiving Practices

The inquiries with state officials and the survey of residential facilities produced important results. The study determined that three state agencies were involved in the placement of 382 children in out-of-state residential facilities in fiscal 1977. DCFS placed seven children out of state. Each placement was individually reviewed and approved by nine different agency officials, including the agency's director and the placement compact administrator. Two children were placed in out-of-state public psychiatric hospitals through the Mental Health Compact. Through Individual Care Grants, DMHDD expended about $54,128 for 10 children placed out of state. None of these 10 children was placed through an interstate compact. The vast majority of out-of-state placements known to state officials were facilitated by Private Tuition Reimbursement Funds provided by IOE. Essentially arranged by parents in cooperation with local school districts and without utilization of a compact, these funds purchased 363 placements in out-of-state facilities. The study suggests that other children were placed in out-of-state residential facilities that were unknown to state officials and not reported by any governmental agency.

Concerning the number of nonresidents accepted in Illinois facilities in fiscal 1977, state officials knew of only 15 such placements. Each of these children received was placed in Illinois through an interstate compact. Eight out-of-state children were received through the Placement Compact, one through the Juvenile Compact, and six through the Mental Health Compact. It was reported that no out-of-state children were received in Illinois public corrections institutions or detention homes.

The survey of 85 residential facilities found the actual number of out-of-state children in Illinois greatly exceeded the amount reported by state officials. The results revealed 74 out-of-state children in boarding schools, 47 in child-care facilities, 89 in private psychiatric hospitals, 44 in residential treatment centers, and three in maternity homes. Thus, compact officials knew about 6 percent of the placements subject to compact intervention. The survey also collected comparable data about important characteristics of these facilities. Ninety-two percent of the out-of-state children they accepted had home residences in contiguous states. In many cases these facilities were close to a juvenile's home residence despite being across state lines. Fifty-four percent of the out-of-state referrals were made by public agencies. Other information included service and staff characteristics, accountability procedures, descriptive data about their clients, and fiscal information.

Services

Illinois officials typically thought the major reason for sending children to out-of-state facilities was that comparable services were not available within the state. Considering facilities approved by IOE for children germane to this study, it was determined that 17 facilities were locataed in Illinois and 76 in other states in the nation. Sixty-one percent of the Illinois children reported in Texas and North Carolina facility surveys were in boarding schools. Twelve Illinois children were placed in one particular residential treatment center in Texas. Thus, a significant number of children sent from Illinois to other states were receiving educational services, but also included were milieu therapy and specialized counseling services.

Nonresident children in Illinois residential facilities were mostly received in psychiatric hospitals and boarding schools. While educational services were usually given in all receiving facilities, counseling, psychiatric therapy, and simple residential services were purchased by out-of-state sending agencies. The average child in all these facilities had access to the community with only minimal supervision.

Fiscal Data

Through Private Tuition Reimbursement Funds and Individual Care Grants, Illinois state government expended about $1,143,128 in fiscal 1977 to purchase placements in out-of-state residential facilities. State expenditures actually exceeded this amount. However, administrative costs and DCFS expenditures were not available.

Among the facilities in Illinois that received children from out of state, the average per diem rates received ranged from $158.50 in psychiatric hospitals to $18 in boarding schools. Child-care facilities and residential treatment centers averaged $23.03 and $45.34 respectively. Three facilities indicated they received different per diem rates for in-state and out-of-state children. The variance ranged from $2.13 more per day for in-state children in one facility, to $10 more per day for out-of-state children in another.

NORTH CAROLINA CASE STUDY DIGEST

North Carolina is largely a rural state, despite the fact that it contains well over 5 million people. Located on the eastern seaboard, its land mass extends well into the Appalachian Mountains. The demographic and economic data available suggest that North Carolina shares many common characteristics with its neighboring states.

Law of the State

The interstate compacts on juveniles, placement of children, and mental health have all been adopted in North Carolina, although the Uniform Juvenile Court Act is not part of state law. There are numerous laws affecting placement of children in and out of state, outside of the compacts and the state's Juvenile Court Act. Import/export legislation exists, most frequently used in cases of adoption, as do rather stringent licensing laws which have resulted in minimal standards of care in receiving facilities within the state. Of particular importance is a 1975 state attorney general's opinion that prohibits state mental health funds from being used to pay for out-of-state inpatient care. Based on this opinion, most other state agencies have imposed a similar self-restriction. The major exception is the state's Department of Public Instruction which administers a statutorily created grant program for exceptional children.

Organization of Youth Services

In juvenile justice, the state Administrative Office of the Courts has superintendency powers of 30 district courts with juvenile jurisdiction. Adoptions and certain felonies by minors are handled by the state's superior courts, also under the oversight of the Administrative Office of the Courts.

While foster care and private facility placements are usually arranged by the district courts or county social services agencies, public institutional services are provided by the North Carolina Department of Human Resources (DHR), Division of Youth Services. For juveniles convicted as adults, units are maintained by the Department of Corrections, Youth Service Complex.

Child welfare services are provided through the state's principal social service agency, the Department of Human Resources. In addition to operating the delinquency institutions mentioned above, another division in DHR licenses public and private residential facilities and foster homes, provides adoption and other protective services, administers the interstate compacts on juveniles and placement of children, and supervises the operations of the county social services agencies. These county agencies enjoy a great deal of autonomy, and a large proportion of service delivery decisions are made at the local level.

Also within DHR is the Division of Mental Health and Mental Retardation Services that, among other duties, supervises local mental health district offices and administers the Interstate Compact on Mental Health.

The state's educational systems are funded and regulated through the Department of Public Instruction (DPI). Within the department, there is a Division of Exceptional Children which is directly involved in placing children in other states. Another unit, the Division of Non-Public Schools, is responsible for accrediting private boarding schools.

Sending and Receiving Practices

The Department of Human Resources and the Department of Public Instruction are the two major agencies in state government responsible for sending and receiving out-of-state children, or for funding or regulating those practices.

From a sending standpoint, the responsibilities in DHR revolve around either processing children under one of the three interstate compacts for which it is responsible, or maintaining records of children placed outside those processes but nevertheless reported to the state. In DPI, the major sending activity relates to the administration of its Educational Expense Grants for Exceptional Children program, which pays up to $2,000 per child who must be educated in private or out-of-state schools. Some of these cases involve out-of-state boarding school placements.

At the same time, these state agencies do not technically place children in out-of-state facilities. They merely assist, in one way or another, local public and private agencies in making their placements. In those cases where state intervention is not sought, either because no funding is available or because the procedures are considered to be superfluous, out-of-state placements do take place without the knowledge of state agency officials. Such placements might be initiated by the district courts, the county social services agencies, private or sectarian agencies, or parents, and would not normally be reported to the state despite the legal requirement, in most cases, to do so.

In 1977, state agencies knew of 525 children placed out of state, 473 through DHR and 52 through DPI. Of that

number, only 54 were reported to be involuntary placements: 20 children were placed in institutions and 34 in family foster care homes. Another 25 children were residing in psychiatric hospitals in 1977, having been sent to these out-of-state facilities during prior years. In aggregating these 45 institutional placements with the 52 cases of out-of-state educational placements, a total of 97 children were known to state agency officials to have been placed in out-of-state facilities. In general, the children were usually sent to states in the southeast, particularly those states surrounding North Carolina.

As with sending practices, DHR and DPI are central to these activities, the former through compact administration and licensing supervision, the latter through the accreditation of boarding schools. Yet, no out-of-state children were received in public corrections institutions or detention homes. There are various types of agencies and facilities that are either not required to report the acceptance of out-of-state children or fail to do so even though they are required to report such cases. This includes medical and psychiatric hospitals, and boarding schools which, while accredited, are not required to report out-of-state admissions. In addition, private facilities might accept such children without bothering to report them. It became obvious during the surveys of receiving facilities and foster homes, that considerably more children were received than were reported to DHR.

A complete understanding of North Carolina's child welfare system must include reference to the Duke Endowment. Originally begun as a fund to benefit orphans, the endowment now contributes funds to operate most child-care facilities in the state. In exchange for the gifts, facility operators reciprocate with information about children received. There is a great deal of cooperation between the endowment, Duke University, private institutions, and DHR which has resulted in a child welfare system that has standards, licensure, common data, and a communication network. However, data on the question of out-of-state placements, although slightly better from Duke Endowment than from DHR, only reflected a small portion of children actually discovered through the detailed research procedures.

Only five children were known to state officials to be accepted in North Carolina facilities during 1977; for the same period, Duke Endowment reported 26 placements. The statewide survey identified 732 out-of-state children in 22 facilities. However, 85 percent were found in boarding schools and 10 percent were found in psychiatric hospitals. Since neither type of facility was required to report such admissions to any state agency or to the endowment, the remaining number corresponds fairly closely to the placements known by state officials and Duke Endowment.

Services

Generally speaking, state officials expressed the strong belief that families and communities should take care of their own children. The extremely small use of out-of-state institutions and the extremely high proportion of foster care placements with persons to whom the children are related would clearly bear out this philosophy. Interestingly enough, the immigration appeared to follow the same pattern: less than 5 percent of the out-of-state children were found in North Carolina facilities that have historically received delinquent and status offender children.

For most institutionalized children, the services tended to emphasize educational and therapy programs as the principal services offered beyond room and board. The boarding schools offered the greatest amount of access to surrounding communities, while psychiatric hospitals were locked facilities which tended to offer very limited community contact.

Fiscal Data

While only general estimates of costs were available, it was estimated that North Carolina spent $1,441,500 on out-of-state care in 1977: $700,000 in institutional care, $487,500 in foster care, $104,000 in Educational Expense Grants for Exceptional Children, and the remaining $150,000 in administrative costs.

Within North Carolina's private facilities, the per diem costs depended upon the type of facility and, sometimes, upon the facility's reliance on outside non-per diem income. Per diem charges varied slightly in boarding schools and much more noticeably in psychiatric hospitals. The three child-care facilities reported a flat rate of $5 per day. The average charges of boarding schools and residential treatment centers were comparable, $13.44 and $14.83, respectively. As could be anticipated, the highest charge was made by psychiatric hospitals, averaging $132.25 per day.

TEXAS CASE STUDY DIGEST

Knowledge about the peculiar distribution of the state's population and its very large land mass are important to a full understanding of any case study about Texas. It is the second largest state in the country, and in 1975 the

population reached 12,237,000. One county contained only 69 persons and 10 other counties had over one half of the state's total population. Of additional importance is that the state shares a border of several hundred miles with Mexico.

Law of the State

As of September 1975, Texas became a member of the interstate compacts on juveniles, placement of children, and mental health. Dispositional alternatives applicable to juveniles adjudicated delinquent or children in need of supervision are explicitly stated in the Texas Family Code. Only delinquents can be committed to the Texas Youth Council, but both children in either adjudicatory category may be placed in other "suitable" public or private institutions. Texas has not adopted the Uniform Juvenile Court Act and each of its 254 counties has one or more of their courts designated to handle juvenile matters.

The state enacted an omnibus Child Care Licensing Act in 1975. The licensing standards promulgated by the Department of Human Resources (DHR) as a result of this act, together with the compacts and the Placement of Children from Another State statute, provide a comprehensive basis for regulating child care and the interstate placement of children. For instance, placing an out-of-state child in a Texas facility without compact intervention or permission from DHR can result in a misdemeanor conviction and license revocation.

DHR licenses nearly all residential facilities in the state. Exceptions include private boarding schools which are accredited by the Texas Education Agency and private psychiatric hospitals and alcoholic health care facilities which are licensed by the Department of Health. Although state-operated facilities are exempt from licensure, they are subject to certification and must meet the same standards as private facilities.

Organization of Youth Services

State government's responsibility for juvenile justice is consolidated within the Texas Youth Council. In addition to operating state corrections institutions, the agency administers parole services for juvenile offenders and funds several community-based residential and nonresidential programs. Detention and probation services are under the auspices of local government and usually under the jurisdiction of juvenile courts.

In addition to its important licensing responsibilities, DHR administers most child welfare services in the state. The supervision and coordination of local operations is carried out by 11 regional offices. However, except for several sparsely populated counties, county child welfare boards support and administer general assistance programs. In a recent year, DHR responded to numerous referrals involving teenagers, including 40,000 reports of truancy, juveniles without supervision, and related problems.

The establishment of funding policy and accreditation standards for the Texas education system is the major responsibility of the Texas Education Agency. The agency accredits all state and nonpublic residential schools, but there is no formalized local-state government system for accreditation, monitoring, and compliance. Without accreditation, a school facility is ineligible for state educational appropriations.

Eight psychiatric hospitals, several out-reach centers, and 28 community mental health centers are under the auspices of the Department of Mental Health and Mental Retardation. The department formulates mental health policy and coordinates the activities of the mental health centers primarily through monitoring practices and the application of compliance standards for grant awards. Each local mental health center operates its own residential facilities and may purchase services from private agencies.

The Texas Department of Health has been delegated the authority for licensing private psychiatric hospitals and facilities for drug and alcohol problems. The licensing standards that have been established by the department mainly focus upon health conditions. The department's issuance of a directory of private hospitals was of special importance to this study.

Sending and Receiving Practices

State officials reported 19 children placed in out-of-state residential facilities during the survey year. There were 13 children sent out of state through the Placement Compact, four through the Juvenile Compact, and two under the Mental Health Compact. None of these placements was made by agencies, which was understood to be consistent with a state government administrative policy prohibiting the expenditure of state revenue to purchase services in other states. This means such placements, when and if they occur, must be paid for out of county or private resources. No private agencies or parents were contacted. However, interviews with knowledgeable local officials suggested that

some juvenile courts and at least one child welfare agency have placed children out of state. Therefore, state government information is incomplete and likely to underrepresent the actual number of Texas children placed out of state.

Further information reported by state officials and the systematic analysis of information received from a survey of 171 residential facilities found that a considerable number of out-of-state children were received in Texas facilities without any direct governmental intervention or knowledge. The consensus was among all officials that out-of-state placements were not made to public corrections institutions or detention homes. Predicated upon interstate compact information, state officials reported 189 out-of-state children received in Texas during fiscal 1977. Thirteen children were received through the Juvenile Compact and 176 through the Placement Compact.

Facility administrators included in the statewide survey reported accepting a total of 1,128 out-of-state children during the same period. There were 559 out-of-state children in boarding schools, 84 in child-care facilities, 73 in psychiatric hospitals, 364 in residential treatment centers, 18 in maternity homes, and 30 in foster homes. It is important to understand that these placements were made to only 59 residential facilities and 190 foster homes. After excluding placements that were not subject to compact intervention—boarding schools and private psychiatric hospitals—compact officials still only knew of 38 percent of the out-of-state children received in one year.

Several explanations can be offered to explain this lack of information. A major cause would appear to be the significantly large volume of voluntary, parental placements that were not subject to compact intervention. Only a very small proportion of the out-of-state children received in these facilities were placed involuntarily by court order or some other social agency. In addition, the enforcement of licensing standards and the systematic collection of information in the DHR about out-of-state children is in the developmental stages.

An interesting situation examined in association with receiving practices in Texas concerned a strong challenge to the state's ability to regulate private facilities through licensure. A network of evangelistic facilities, which refused to participate in the survey but was estimated to accept a large number of out-of-state children, refuses to submit to DHR's licensure. Currently in litigation, the facility executives argue that their operations are not subject to governmental regulation because of the constitutional provision regarding separation of church and state. The decision in this case may have a significant impact upon licensing laws in Texas.

Services

It was explained in Texas that most out-of-state placements are made for purposes of adoptions, changes in foster parents' residences, placement with relatives, and other reasons not germane to this study. The small number known to state officials were described as placements located close to the child's home despite being across state lines. A few cases involved attempts to maintain a definite separation between the child and his family and friends. Most of the time, the major service purchased is simply residential care. However, specialized psychiatric services and milieu therapy were also arranged for.

Out-of-state children accepted in Texas facilities had home residences in most parts of the world. Predominantly from Mexico, 36 percent of the children in the facilities surveyed were from foreign countries. Most sending states and foreign countries placed children in Texas for services provided in boarding schools. The boarding schools typically offered educational (usually college preparatory), religious, recreational, and social development services. Residential treatment centers generally specialized in milieu therapy with some modality of individual and group counseling. Other services purchased from Texas residential facilities included psychological, psychiatric, maternity, and simple residential services.

Fiscal Data

No cost data was given for the 19 out-of-state placements known to state government. The source of most expenditures was local and private revenues.

The average per diem rates received from out-of-state children ranged from $3 in maternity homes to $122 in psychiatric hospitals. Boarding schools averaged $15 per diem rates, child-care facilities $4, and residential treatment centers about $51. Six facilities charged different per diem rates for children from out-of-state than in-state.

FEDERAL AGENCIES INVOLVED IN SENDING JUVENILES

It became apparent, through the survey of receiving facilities, that a number of juveniles were sent by or through federal agencies. Although outside the scope of the project, the questions raised seemed to warrant further

investigation. Three agencies were investigated, namely, the Bureau of Indian Affairs, the Bureau of Prisons, and CHAMPUS.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA), within the Department of the Interior, operates an extensive social service and boarding school program for Indians living on or near reservations. Most Indian child welfare assistance and service programs are provided by BIA, either directly or through contracts with tribes or state welfare agencies. In most cases, Indian children or their families seek assistance. In a number of instances, however, referrals are made by tribal courts or social service departments. Services provided do include foster care and institutionalization, sometimes outside of the state in which the reservation is located. According to BIA statistics for fiscal 1976, only 73 cases out of 1,165 involved out-of-state institutional care, about 7 percent. In 1977, the number increased slightly, to 82. In both years, over one half of the children (boys) were sent to two facilities in Arizona, both of which normally accept delinquent and status offender children. The only facility used that corresponded to the test states was the Brown School in Texas. The school admitted two children in 1976 and three in 1977 who were mentally retarded.

BIA also maintains its own network of 15 elementary and secondary boarding schools, none of which is located in the test states. The schools are used primarily to provide education for over 5,000 Indian children who live in such sparsely populated areas that schools are not maintained closer to their homes. In some cases, the BIA Social Service Program will refer children for placement in one of the boarding schools. When this occurs, it is apparent that reasons other than the need for an education are present, such as family disintegration.

Bureau of Prisons

The Bureau of Prisons (BOP), within the U.S. Department of Justice, receives both juveniles and adults committed to its custody from U.S. district courts. For purposes of this project, only juveniles committed under the federal Juvenile Justice Act are relevant. These would include those who committed offenses prior to their eighteenth birthday and proceeded against before they became 21 years of age. BOP categorizes its cases by status, not age. That is to say, only juvenile delinquents are juveniles; even its youthful offender and adult populations may include adolescents. In fiscal 1976, 30 percent of its caseload was 18 or younger.

Since 1975, BOP has drastically altered its incarceration policies regarding juveniles. Until that time, several hundred juveniles were confined each year in seven federal facilities, along with young adults. Effective February 1977, the decision was made to remove all juveniles from federal facilities and place them in state and local public facilities, private facilities, or foster homes. As of January 1968, there were two juveniles still remaining: one located at the Federal Correctional Center in Butner, North Carolina, and the other, a Mexican alien, in California. Since foster care is rarely used, it is fair to assume that a large percentage of its 218 juveniles boarded out are in state and private institutions.

Detention of federally charged juveniles is handled by U.S. marshalls. When a juvenile is apprehended, he is taken to the nearest approved place of detention, usually a county or state detention facility. It might also be the juvenile quarters of a jail or a federal detention facility, such as those in San Diego and Miami. Since out-of-state detention is not tantamount to out-of-state placement, this issue was not pursued.

CHAMPUS

CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) is operated by the U.S. Department of Defense. CHAMPUS benefits dependents of military personnel, covering medical and surgical conditions; nervous, mental, and chronic conditions; and contagious diseases. It may not be used to provide domiciliary or custodial care that is not medically necessary. The program operates similar to Medicare/Medicaid in that third-party payors are used to pay for the care received. These third-party payors, usually insurance companies, then claim reimbursement from CHAMPUS. To qualify, both the facility and the patient must be approved by CHAMPUS. Authorization to incur the debt is then issued.

Of the 250 children in its program receiving residential care for nonphysical handicaps, less than 200 are placed in facilities outside their states of residence or countries of domicile. Presumably, many of these are of the nervous, mental, and chronic condition variety. While CHAMPUS is prohibited form paying for court-ordered placements, it does appear that it pays for residential care for delinquents or status offenders so long as mental illness or a handicap condition is present. The statistical data generated by CHAMPUS was not relevant to this project.

6. Data Collection Issues

Data sources available in each of the states varied in adequacy, validity, reliability, and retrievability. What all states had in common was that the state agency officials who were in the best positions to know how many children had been sent or received, consistently believed they were aware of practically all of the placements. In reality, they all knew of a relatively small proportion of children sent or received across state lines.

The reasons for this curious phenomenon are readily apparent from a comparison of the various data problems of the sending state, the receiving state, and the receiving facility.

SENDING STATE DATA PROBLEMS

Information available from state officials about children sent to other states was representative of three circumstances. First, state agencies were able to report the number of children under their care or custody whom they placed in other states. This number was negligible in all the states, normally restricted by state laws or opinions of attorneys general proscribing state funds from being used for out-of-state placements.

The second circumstance resulted from situations in which state funds, or funds controlled by state agencies, were used to pay for placements made by local courts, school districts, or public agencies. In all probability, the information obtained from state education agencies was the most complete, as far as it went. That is to say, the likelihood is extremely slight that local school districts placed children out of state without state reimbursement. The other state agencies' officials were either unaware or unsure of local governmental practices, or were positive that no such placements occurred. Instances were discovered, however, that verified that locally initiated placements occurred, frequently in violation of state law and unknown to state agency officials.

The third circumstance where state agencies had information resulted from placements either being arranged through interstate compacts or from placements not made under the compacts that were nevertheless reported to a compact office. Again, violations of compact procedures were discovered, the extent of which could not be determined without a thorough investigation of local records. Because of the limited uses intended for both the Juvenile and Mental Health Compacts, it can be safely assumed that almost all extralegal placements arranged by local governments or private agencies represent violations of Placement Compact provisions. There is a bit of irony here. Since restrictions have been imposed on the use of state funds for out-of-state placements, local agencies are forced to use either private or local public monies. Because of this, some feeling was expressed that such placements were no longer the state's business. Thus, by cutting off funds in an effort to reduce or eliminate such placements, a state may have reduced its ability to know when placement occurs. The absence of funding appears to be a greater reporting disincentive than license revocation, while other sanctions appear to serve as reporting inducements.

There are, of course, many other explanations and the observations above should not be interpreted as a blanket conclusion that state agencies have no information or that there is no compliance by local agencies. If receiving state data is in any way reflective of sending practices in the test states, then it would be appropriate to conclude that the vast majority of placements are made by parents under completely noncoercive circumstances, primarily because they either wish to purchase private education for their children or because they find it necessary to place their children in private psychiatric hospitals. It is somewhat difficult to identify the public interest in such circumstances, except for assuring the quality of facilities and protecting the rights of the affected children. In neither instance does there seem to be much to distinguish out-of-state from in-state placements.

In addition, there are incredibly large categories of placements that are simply not reportable to any state agency because of specific exclusions in the interstate compacts or in other state laws. Children placed by parents with close relatives are exempted, as are placements in educational, medical, and private psychiatric facilities, and in facilities serving retarded, epileptic, or disabled children. In addition, certain important but statistically less significant instances were discovered. For example, some facilities are part of interstate networks owned by a single corporation

or religious denomination. Children might well be transferred from one campus to another without informing a compact office.

Although the full impact could not be documented through state agencies, it should be pointed out that some state juvenile court legislation contains enabling provisions which permit the juvenile court to make out-of-state placements. While the uniform provisions of the compacts are intended to supercede such inconsistent provisions, it is conceivable that some courts interpret state juvenile court legislation to justify out-of-state placements without resort to the compacts.

Also unknown to state officials are the placement activities of federal agencies, except for those limited instances where placements are made in state corrections facilities, with the consent of the cognizant state agency. Of the three test states, only Texas permitted this practice. The placements by federal agencies of juveniles into federal facilities would be understandably unknown to state officials. For example, one juvenile was found in the Bureau of Prisons' Federal Correctional Center in Butner, North Carolina, who was not known to North Carolina officials. Also, when a federal district court judge in North Carolina commits a child to the Bureau of Prisons and the bureau places the child in a private facility in Texas, neither state's officials are aware of the placement. The same is true of cases where the Bureau of Indian Affairs intervenes to remove children from Indian reservations and places them in private facilities. Neither the state where the reservation is located nor the state where the facility is located would have been notified.

The conclusion reached, with respect to the lack of reliable data about the frequency of interstate placements by state agencies, is that no amount of diligence and enforcement by state agencies will correct this condition. Major changes in the compacts and other state laws would have to occur before these agencies would even possess sufficient authority to address the problem more comprehensively.

With respect to those children about whom the state agencies were aware, a number of problems were encountered. Except for Illinois, the states do little to personally inspect or monitor out-of-state facilities or the children in them. Heavy reliance is placed upon past successes and reports from the facility operators or compact administrators. Once the placements have occurred, compact administrators play a small role unless a problem arises, such as a runaway from placement, a return, or delinquent payments. In such cases, compact administrators do whatever is appropriate under the circumstances.

It was clear from the interviews that the foster care, placement, or compact offices of state agencies, or federal agencies for that matter, do not arrange their records in ways consistent with the objectives of this research. Even where project staff obtained data that was both responsive and fairly complete, the information had to be generated by way of special reports. In a number of instances, the figures given were admittedly estimates. For many pieces of data, the only way to obtain them would be to manually review thousands of case files, thus rendering otherwise available data virtually inaccessible. The apparent inconsistency between the relatively few out-of-state placements and the thousands of files can be explained in one of two ways. In some agencies, all children served are in a single, alphabetical file, regardless of the type of services delivered. In other agencies, 1977 data had already been merged, alphabetically, with files from the previous 10 or 15 years. Despite much interest in the project and an incontrovertible desire to help, state agency personnel were unable to take the time necessary to unearth the requested information. Another irony that seemed to crop up was the fact that data was frequently harder to get from computerized systems than they were from hard-copy ones.

Conclusions concerning Retrievability of Sending State Data

For purposes of convenience, the discussion will be broken down into subtopics centering upon clusters of questions having common themes.

Number of Juveniles Sent. It is possible to obtain data about the number of juveniles sent out of state only under the following circumstances:

(1) When the state agency is the sender.

(2) When the state agency is the payor for the placement.

(3) When the child is placed under an interstate compact.

(4) When a local agency informs the state agency of a placement due to statutory reporting requirements.

(5) When children are placed under the auspices of federal agencies. This information is available from those agencies directly.

If the research were organized in a different manner to specifically include local public agencies as an original data source, it would be possible to obtain data about the number of children sent out of state under the following

circumstances:

(1) When a local court or public agency places a child and pays for it with local funds.

(2) When a local court or public agency places a child in a free placement.

(3) When there is no statutory requirement to report out-of-state placements or where such requirement is intentionally avoided.

(4) When out-of-state placements are statutorily proscribed but occur anyway. For example, North Carolina prohibits the use of state funds to place children in out-of-state facilities. However, some evidence was encountered of such placements paid out of Title XX funds.

It is not possible to obtain accurate numbers about placements made under the following circumstances:

(1) When a parent, guardian, custodian, attorney, or family agent places a child directly in the out-of-state facility.

(2) When foster parents move and take the child with them.

(3) When the child is placed under the auspices of certain religious groups that maintain interstate networks of child care facilities.

States of Placement. Generally speaking, state administrators knew which states were most frequently used for those children of whom they were aware. However, normal recordkeeping practices did not generate reports on this point. It would only be possible to collect the information through examination of children's case records, and probably would have to be done by project researchers. In some states, such information should be readily available at the courts or local agencies, thereby avoiding the need for case file examinations.

Reasons for Placement. In most cases, state administrators demonstrate a good understanding of the reasons why out-of-state placements are deemed to be necessary. Federal agency officials are even more specific. The Bureau of Indian Affairs only uses a handful of facilities in the country; for example, one for deaf and blind Alaskan Indians, located within the continental United States.

Identification of Senders. Sending agencies can be clearly identified in the areas of juvenile justice, mental health, education and, to a much lesser extent, in child welfare. That is to say, in the first three types of agencies they know, in a general way, who sends children out of state, even though they may not know the frequency. In child welfare, the information seems to be lacking with any specificity beyond local and (decentralized) state child welfare offices. For example, they may know that "religious organizations" may place children out-of-state, but they would not know about the Baptists or Lutherans. What has become very apparent is that state government agencies are unaware of a number of locally arranged placements frequently made by public agencies. This is true despite some state laws requiring that all senders report out-of-state placements to pertinent state agencies. In addition, the research in the three test states clearly indicates that state and local health department should be eliminated from further inquiry. They were not at all involved in interstate placements of children.

Cost of Placements. The evidence shows that it is much easier to determine how much a state agency spends on out-of-state placements in the aggregate than on an individual child. In states where the use of state funds is prohibited for out-of-state placements, the only cost data available from state agencies would be for payments made from such federal programs as AFDC or Title XX. Although not collected in this study, public funds paid by local governments for out-of-state placements would be identifiable, but only through a county-by-county study. Private funds, especially those paid by religious groups and parents, are not identifiable from those sources because those organizations will not share that information and because they cannot be accurately identified.

To the extent that cost data is available through state agencies, it is aggregated and not available on a per child or per diem basis. Since lengths of stay are not the same for every child, dividing the aggregate amount by the product of the number of children and estimated average length of stay to determine average per diem cost would be unrealistic and only marginally useful. In some cases, foster care is reported separately by in-state and out-of-state costs; in other cases, the data is merged.

Monitoring Practices. It is possible to determine the extent to which states exercise their authorities under the compacts in two respects: monitoring practices of public and private agencies in placing children in other states, and monitoring the services provided by out-of-state facilities for children sent from their respective states. Generally speaking, monitoring practices in either situation are weak, except for requested assistance from compact administrators.

Size and Type of Facilities. Except for the advertisements and literature provided to them by the receiving facility administrators, sending state officials have poor information on the size or type of facilities to which children are sent.

Illinois is the only state in the sample that systematically visited out-of-state facilities where Illinois children are sent.

Types of Children. While the total number of children sent is not known by state officials, they do have information regarding children's legal status and reasons for placement for those children of whom they are aware. It is assumed that much more specific information concerning legal status, public guardianships, individual education, and behavioral and psychiatric problems would be more readily available from local government agencies.

Use of Compacts. Sending states can provide reliable information on the use of interstate compacts. Further, good information can be obtained regarding problems and shortcomings of compact administration, particularly with respect to why compacts are not used more consistently.

RECEIVING STATE DATA PROBLEMS

When viewing the data available relating to receiving practices, two main sources were used: state agencies and receiving facilities. In some ways, it offered a measure of the states, in terms of their awareness of children in placement. In order to have a truer picture, the factors mentioned above had to be taken into account; that is to say, state education agencies knew nothing about the number of children in boarding schools from other states because there were no reporting requirements imposed on the schools. Even so, in facilities where, either because of compact requirements or licensing conditions, complete reporting should have taken place, the numbers of children from out of state exceeded the numbers reported to the state agencies. In all three states, lists were supplied containing the names and addresses of licensed facilities that might potentially have out-of-state children. Agency officials could easily identify the facilities most likely to be ones that admitted large numbers and they were invariably correct. But other facilities were also found to have received out-of-state children, of which state agency officials were obviously not aware. Basically, the state data reflected compact placements and little else.

Conclusions concerning Retrievability of Receiving State Data

Number of Juveniles Received. It is possible to obtain information from state officials about those children placed under compacts. Almost nothing is known about the numbers of children placed without compact involvement, except that some state licensing offices and regional offices of state agencies do get involved in monitoring facilities and do have some data on out-of-state children.

Sending States. Receiving state agency officials have access to information about the states of origin of children placed under the compacts. However, the data is not routinely extracted. It would require, in most instances, a case-by-case examination of folders kept by compact administrators. The folders, whether filed by child or by state, are not filed by date. Therefore, a second step of culling the merged data for a particular time period would be required.

A national study could eliminate these steps through a reliance on sending state and receiving facility data.

Reasons for Sending. Because of their background and experience, compact administrators generally believe they know why children are sent. While there is no reason to doubt the validity of their impressions, no reliable set of reasons could be established for compact cases because many of the case records would not indicate the reasons for placement and the majority of cases were not processed through compacts.

Identification of Receiving Facilities. State agencies are usually aware of the major receiving facilities within their areas of responsibility which get large numbers of out-of-state children, but they are not aware of all placements. In addition, social service administrators do not know much about boarding schools, which are well known to education agency officials, and vice versa.

Use of Compacts. Since both sending and receiving compact practices are controlled by the same people, the response under Sending States Data Problems is equally applicable here.

RECEIVING FACILITY DATA PROBLEMS

The data collection effort at the receiving facilities presented its own set of problems. Out of the 119 facilities contacted which admitted out-of-state children, two facilities and two psychiatric hospitals refused to cooperate. Difficulties in obtaining mailing lists of foster parents from state agencies, and in the mailing process itself, resulted in a mailing in Texas to about a 10 percent sample; a mailing in North Carolina through county social services agencies, with an extremely poor response rate; and no mailing in Illinois at all. A more detailed discussion is in Chapter 1.

In considering the facilities that agreed to cooperate, a number of problems were encountered. In all cases, the number of out-of-state admissions could be identified. In some types of facilities, particularly boarding schools, out-of-state children could be identified by name and state or country of residence, but not for all three years. In other

facilities, admissions records had to be manually searched for the same pieces of information. All information concerning per diem charged for such children, payments received from out of state, reasons for placements, and services provided to out-of-state children was obtained from administrators based upon recollection and their knowledge of how their facilities functioned. Specific key data elements were simply nonexistent. For example, most facility operators assumed that children who came to them were voluntary admissions, with some allowances for particular children whom they remembered. They did not know how many were under court jurisdiction, although they conceded that some children may have been under court orders when placed. What could be reliably determined were the numbers of out-of-state children accepted and the services they most likely received.

Conclusions concerning Retrievability of Receiving Facility Data

Number of Juveniles Received. Obviously, receiving facilities are the best source for this information.

Sending States. In all cases, this is known. However, in most institutions it is not regularly reported. Some facilities, such as boarding schools, collect and disseminate the states and foreign countries represented within the student bodies for each current school year, but then dispose of the data. It would be retrievable, through examination of individual children's records.

Reasons for Sending. As in the other two data sources, facilities' operators subjectively know why juveniles were sent to their facilities, but have only anecdotal evidence to substantiate their beliefs. The best source for this information would be local government agencies.

Program, Staff, and Treatment Differences. This information is fairly easy to acquire, if descriptive and not evaluative information is desired. For example, the size of the teaching or social work staff can be determined with no difficulty, but the quality of such programs cannot be obtained through interviews. Similarly, it is easy to learn that facility administrators perceive few differences in the manner in which they treat out-of-state children in relation to in-state children. Whether those perceptions are accurate cannot be fully determined through these interview techniques.

Size and Type of Facilities. This is the most obvious kind of information obtainable from this source. One way to verify the proper classification of facility types seems to be by determining to what professional associations the facility belongs.

Types of Children. Here is one of the most remarkable differences in the data collected from different sources. Facilities classify children according to behavioral, physiological, or educational needs, rather than by legal status. That is to say, a facility may serve "emotionally disturbed children" and not collect (or, in some cases, not even have) information about the number of delinquent, status offender, or abused children in the population. Again, sending state data from local governments would be the best sources.

Security Characteristics. Facility administrators were quite willing to discuss security and to offer tours of the grounds. Information about both physical and psychological restraint is easily obtained.

Cost of Placements. Most facility administrators were willing to openly discuss per diem and other sources of income. It was possible to determine per diem normally charged, whether scholarships or partial payments were accepted, and approximately how much was obtained from federal grants, gifts, church funds, and other sources. Further, little if any information was obtainable about payments made from third-party payors, since parents or social agencies generally pay the facility billings and are reimbursed from insurance companies, federal grants-in-aid, or insurance programs, estates, or similar sources after the fact.

Use of Compacts. Receiving facilities know sometimes whether they receive children under compacts, but they keep no statistics on this point. State agencies are the best source for this type of information.

CONCLUSION

The discussion to this point has identified a series of data collection problems associated with the efforts to collect sending state, receiving state, and receiving facility information. These findings assume additional importance when synthesized and recapitulated to indicate recommended sources for data collection. Table 3 lists the pertinent types of information and presents, in summary form and with comment, the best source for collecting the type of data being considered.

Table 3
SUMMARY OF DATA COLLECTION ISSUES
RELATING TO THE INTERSTATE PLACEMENT OF JUVENILES

Type of information	*Best source*	*Comment*
Number of children	Receiving facilities	This would include private and public, voluntary and involuntary placements
Legal status of children	Local and state sending agencies	This would only include public, mostly involuntary, placements
Reasons for and costs of placements	Local and state sending agencies	Aggregate data is the most accessible, resulting in generalizations that are nevertheless useful
Extent of compact usage	State agencies responsible for compacts	The majority of interstate placements are not now subject to compact applicability
Relevance of licensing laws	State agencies in receiving states	Reporting out-of-state placements is frequently tied to licensing compliance

7. Recommendations for a National Study

The following discussion will set forth a series of alternative approaches for any future research concerning the interstate placement of children. These recommendations are predicated upon the feasibility studies conducted in Illinois, North Carolina, and Texas; the review of pertinent literature, interstate compacts, and other laws; and some level of understanding about the informational needs of federal and state governments. With respect to this last point, a fuller appreciation for the implications of the following recommendations can be achieved through an examination of their underlying assumptions.

The basic purpose of a national study about the interstate placement of children would be to fill a presently existing information gap. In other words, the initial assumption maintains that there is an absence of comprehensive and authoritative information about the interstate placement of children in the states. Furthermore, the types of information desired must be relevant to the public interest. The desired information must also be systematically and reliably retrievable.

Specific research topics about the interstate placement of children can be organized into three general areas: categories of children, types of facilities, and units of organization. Possible informational elements will be identified for each topic area, followed by a comment about data collection issues.

CATEGORIES OF CHILDREN

Four categories of children may be relevant to a national study. They are:

(1) Court-ordered placements after adjudications for delinquency, status offenses, dependency, or other statutory categories.

(2) Involuntary placements by public and private social agencies after juvenile courts have transferred jurisdiction, custody, or guardianship.

(3) Voluntary placements by social, religious, and education agencies, whether or not the children were, at the time, under court jurisdiction.

(4) Voluntary placements by parents when the children were, at the time, under court jurisdiction.

Private facilities receiving out-of-state placements are rarely cognizant (or failed to expressed any cognizance) of court-ordered or involuntary placements. For the most part, facility administrators indicate that internal policies prohibit involuntary placements. The overwhelming number of children found in facilities are placed there voluntarily by parents or guardians. While some parents may place them over their children's objections and while other parents may place them to avoid court orders, there is no legitimate research technique that would capture this information on a national basis. A small sample study, focusing on a few selected counties, might be feasible, but it might only tend to verify the nonretrievability of such factors as parental motives. Another approach might be to administer a self-reporting questionnaire to children in such facilities but, again, it would have limitations.

RECOMMENDATION

A national study on the interstate placement of children should include court-ordered and other involuntary types of placements, based upon court and social agency sending practices of the states.

TYPES OF FACILITIES

Applying the categorization of facilities developed in this feasibility study report, the following types of facilities *could* be included in a national study:

1. *Boarding schools*, consisting of boarding schools and military academies.
2. *Child-care facilities*, consisting of children's homes, orphanages, and shelter facilities.
3. *Psychiatric hospitals*, consisting of hospitals which either are completely devoted to mentally ill juveniles or which have juvenile psychiatric units.

4. *Residential treatment centers*, consisting of those facilities that offer training and counseling as their primary services.

5. *Other*, consisting mostly of maternity homes.

6. *Foster homes.*

The facilities were found to be an excellent source of information about children; however, many administrators gave estimated data. The majority of out-of-state placements are found in facilities that are not normally regarded as "juvenile justice" facilities. By far, the largest group is composed of voluntary placements in private boarding schools. Other children would be found in psychiatric hospitals, certain types of residential treatment centers, child-care facilities, and such facilities as maternity homes. Traditional juvenile justice facilities, such as detention homes and corrections facilities, contain so few out-of-state placements as to be negligible. In Texas, a few children were detained for the Bureau of Indian Affairs, as a courtesy, until private treatment center openings occurred. No out-of-state placements were found in public corrections facilities except for two juveniles, one at the Federal Correctional Center in Butner, North Carolina, and the other in California.

Although state agencies are excellent sources for obtaining lists of facilities and foster homes which may have out-of-state children, the process of elimination is extremely tedious. For example, 65 percent of the 171 facilities contacted in Texas had no out-of-state children for any of the three years investigated. Also, while the survey of foster homes was especially problematic, no source of information (including the postcard survey) suggested that foster homes receive any significant number of out-of-state placements. In Texas, for example, out of 625 foster parents surveyed, 190 responded, 92 percent of them negatively. Of the 16 foster home parents that responded in the affirmative, 30 children were reported for 1977.

RECOMMENDATION

A national study on the interstate placement of children should include:

Placements in child-care facilities, based upon the types of children normally sent there.

Placements in residential treatment centers, based upon the types of children normally sent there.

Placements in detention and corrections facilities, based upon state and federal agency records. (The facilities need not be individual surveyed since out-of-state placements are made through compacts or the intervention of either the Bureau of Indian Affairs or the Bureau of Prisons. Information that could only be available through surveys of public detention and corrections facilities would be to document the frequency of and reasons for the confinement of out-of-state children. For example, if there is interest in knowing how many runaway children are detained in other states or how many such children are confined in corrections facilities for offenses committed in those states, then detention and corrections facilities must be individually surveyed.)

A national study on the interstate placement of children *could* include:

Placements in psychiatric hospitals, depending upon certain considerations. It is clear that the facilities are secure and that many of the patients are there involuntarily. On the other hand, mental illness and probate court procedures may be beyond the primary focus of the survey. The dec sion for or against inclusion would probably turn on these points.

Placements in other facilities, depending upon the public interest in pregnant girls receiving obstetric care outside their states of residence.

A national study on the interstate placement of children should not include:

Placements in boarding schools, since the infrequency of involuntary placements by public agencies appears to argue against inclusion.

Placements in foster homes, although clearly relevant, since the infrequency of foster home usage for out-of-state placements would not lend itself to any cost-effective way to collect the data. In addition, the typical homelike environments found in foster homes might suggest less of a public concern for these types of placements.

UNITS OF ORGANIZATION

Topics associated with this final area of information are research-oriented in scope and represent the best methods for collecting data about public and private sector involvement in interstate placement practices. Decisions reached under the first two categories impact upon the scope of information to be considered here. Therefore, predicated upon the recommendations that have previously been made, research topics would include: (1) fiscal resources, (2) interstate compacts, and (3) licensing and related laws.

Fiscal Resources

It is assumed that there is a public interest in investigating the sources and amounts of funds expended for the interstate placement of children. Of particular concern might be the extent to which federal grant-in-aid funds are used to facilitate this placement practice. Such data is extremely difficult to retrieve, since out-of-state institutional care costs are usually merged with either general foster care expenditures or are indistinguishable from in-state placement costs. However, the feasibility study report suggests that certain approaches in acquiring this information are more successful than others. The agency or unit of government sending children to facilities in other states is the best source for identifying the amounts and sources of funds associated with interstate placement practices. In two of the test states, certain state agencies administered special state grant-in-aid programs that were used by local governments for placing children out of state. Obviously, state agencies could accurately report on these expenditures. At the same time, it was determined, in all three states, that county government must be examined for fiscal information relative to local sending practices.

RECOMMENDATION

A national study on the interstate placement of children should include the amounts and sources of funds associated with these placements, based upon a survey of county and state government expenditures. In about 20 to 25 states, state expenditure data might be adequate. In the remaining 25 to 30 states, examination of county records would be the only realistic approach to data collection.

Interstate Compacts

The three compacts investigated reveal that the Juvenile and Placement Compact provisions are frequently violated by both senders and receivers, and that the Mental Health Compact is rarely applicable. In addition, the circumstances surrounding the placement of large numbers of children are outside the purview of any of the compacts. Even though these compacts were found to have serious limitations, it was clearly established that they essentially provide the only legislatively uniform basis for regulating and monitoring interstate placement practices.

RECOMMENDATION

A national study on the interstate placement of children should include a policy review of state and local practices involved in sending, receiving, and regulating the interstate placement of children under the interstate compacts. Focusing upon the juvenile, placement, and mental health compacts, the study should also develop suggested amendments that would establish more uniform and effective compact utilization.

Licensing and Related Laws

In addition to interstate compacts, licensing laws and standards were found to have a profound importance on interstate placement practices. Reporting procedures and standards of care, which are built into some licensing laws, provide a means by which states could gain better oversight for out-of-state children being placed in private facilities. Based upon the organization of state agencies in the test states, it appears that the interrelatedness of compact administration and facility licensing activities is not fully appreciated.

RECOMMENDATION

A national study on the interstate placement of children should include consideration of existing licensing laws and standards, based upon a coordinated effort involving compact associations and their constituents, together with national and regional associations of licensing agency representatives and administrators. The effort should focus upon identifying methods for strengthening the regulation of the interstate placement of children through both the compact and licensing channels.

As a further implication to a national study, it should be understood that other than their administration of education grant-in-aid programs and accreditation of non-public schools, state departments of education were found to have no significant relationship to the interstate placement of children. Considering the lack of relevance of boarding schools and that the grant-in-aid programs usually fund placements in them, a national study could exclude an investigation of state departments of education. A few exceptions may be necessary where education grant-in-aid programs can be used to fund out-of-state placements in residential treatment centers or other such facilities for

children that are behavioral problems in schools. Also, because of insufficient relevance to the interstate placement of children, state departments of health should be eliminated from a national study.

CONCLUSION

It is felt that a national study would be possible but should be focused more sharply than this feasibility study. It is recommended that such a study include the collection of information about court-ordered and other forms of involuntary placements in child-care facilities and residential treatment centers. Facilities such as psychiatric hospitals and "other" facilities could be included, based upon policy decisions concerning them. Detention and corrections facilities should also be included but need not be individually surveyed, again, depending upon policy considerations.

Policy research into state and local government practices concerning the use of interstate compacts, funding resources, and licensing standards, should be undertaken. These tasks would have to be approached from both the viewpoints of sending practices in the sending states and regulatory practices in the receiving states.

Finally, it is recognized that a series of needs will naturally arise from the generation of statistical reports and policy analyses of state and local interstate placement practices. This information, and its implications for policy development, should be broadly disseminated to policymakers, planners, administrators, compact and licensing officials, and other relevant individuals. This could be accomplished through several methods, but national or regional conferences, seminars, and workshops would provide the best alternative. In other words, a grant to fund a national study should also include sufficient funding to disseminate the findings to decisionmakers who can use them.

Appendixes in the original document have been removed due to small print size.